



New South Wales

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

ERIC ROOZENDAAL, M.L.C.,
Acting Minister Assisting the Minister for Finance

Explanatory note

The object of this Regulation is to amend the *Occupational Health and Safety Regulation 2001* to put in place measures aimed at preventing major accidents occurring at major hazard facilities and protecting the health and safety of persons at work and the public from hazards leading to, or arising from, such major accidents.

Major hazard facilities are locations such as oil refineries, chemical plants and large fuel and chemical storage sites where large quantities of certain hazardous materials are stored, handled or processed.

The National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* of the Commonwealth (which has since been repealed) declared a national standard relating to the control of major hazard facilities. That standard now has effect as if it were made by the Australian Safety and Compensation Council.

This Regulation inserts a new Chapter, Chapter 6B (Major hazard facilities), into the *Occupational Health and Safety Regulation 2001*. The new Chapter gives effect as a law of New South Wales to the hazard identification and risk assessment approach for the regulation of the major hazard facilities as outlined in the national standard. The new Chapter also requires major hazard facilities in the State to be registered.

The new Chapter also contains provisions that deal with the following:

- (a) requiring operators of major hazard facilities to regularly review risk assessments,
- (b) requiring operators of major hazard facilities to ensure that all persons (including members of the public) are not exposed to risks to their health and safety arising from a major accident occurring at the facility,

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008

Explanatory note

- (c) requiring persons who are operating, or are intending to operate, major hazard facilities or potential major hazard facilities, to notify the WorkCover Authority of that fact and provide other information,
- (d) the provisional registration of major hazard facilities by the WorkCover Authority,
- (e) the consequences of such provisional registration, including that operators of such facilities must comply with certain conditions, such as conditions relating to safety, emergency planning and security,
- (f) requiring operators of provisionally registered major hazard facilities to apply to be fully registered,
- (g) the registration of major hazard facilities, including the duration and renewal of such registration,
- (h) the consequences of such registration, including that the operator of such a facility must comply with certain conditions, such as conditions relating to safety, emergency planning and security,
- (i) the cancellation and suspension of such provisional registration or registration of major hazard facilities,
- (j) duties of employees at major hazard facilities,
- (k) the keeping of records of major accidents and other incidents at major hazard facilities,
- (l) security at major hazard facilities,
- (m) other related matters.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including Part 3 (Regulations) and section 135A (Dangerous goods—extension of Act).

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008

under the

Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008*.

2 Commencement

This Regulation commences on 14 July 2008.

3 Amendment of Occupational Health and Safety Regulation 2001

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Chapter 6B

Insert after Chapter 6A:

Chapter 6B Major hazard facilities

Part 6B.1 Preliminary

175 Application

- (1) This Chapter applies in relation to major hazard facilities, potential major hazard facilities and other facilities.
- (2) However, this Chapter does not apply to premises that are:
 - (a) a port operational area under the control of a port authority, or
 - (b) a pipeline to which the *Gas Supply Act 1996* or the *Pipelines Act 1967* applies, or
 - (c) a pipeline to which provisions of the repealed *Dangerous Goods Act 1975* and the *Dangerous Goods (General) Regulation 1999* apply (by operation of clause 3 of Schedule 3 to this Regulation).

Note. This Chapter also does not apply to a mine or a coal workplace—see clause 4 (3) and (4).

- (3) In this clause:

port authority means a body established under Part 2 or 4 of the *Ports and Maritime Administration Act 1995*.

port operational area means the land and sea, including the fixed facilities and vessels, located in any area defined in Schedule 1 to the *Ports and Maritime Administration Regulation 2007* and includes any berths adjacent to such an area.

175A Definitions

- (1) In this Chapter:

aggregate quantity ratio or **AQR**, in relation to a Schedule 8 material, means the aggregate quantity ratio as determined in accordance with subclause (2).

facility means the whole of any premises at which Schedule 8 materials are present or likely to be present for any purpose.

major accident means an incident (including an emission, loss of containment, fire, explosion or release of energy or projectiles, but not including the long term, low volume release of any material) involving a Schedule 8 material occurring in the course of the operation, commissioning, shutdown or maintenance of a major hazard facility that poses a risk of serious danger or harm (whether immediate or delayed) to any person (including members of the public).

major hazard facility means:

- (a) a facility at which Schedule 8 materials are present or likely to be present in a quantity that exceeds their threshold quantity, or
- (b) a facility where the aggregate quantity ratio of Schedule 8 materials present or likely to be present exceeds 1.0, or
- (c) a facility at which Schedule 8 materials are present or likely to be present, not being a facility to which paragraph (a) or (b) applies, that is, for the time being, determined by WorkCover to be a major hazard facility under Part 6B.5.

modification, in relation to a major hazard facility, means:

- (a) a change to any plant, processes, materials, operating conditions or operating procedures (including the introduction of new plant, processes, materials, operating conditions or operating procedures), or
- (b) a change to the quantity of Schedule 8 materials present or likely to be present (including the introduction of any new Schedule 8 materials), or
- (c) a change to the safety management system of the facility, that has the effect of:
- (d) significantly increasing the risk of a major accident occurring, or
- (e) in relation to any major accident that might occur, significantly increasing:
 - (i) its magnitude, or
 - (ii) the severity of its consequences to persons (whether on-site or off-site).

near miss means any incident that, but for mitigating effects, actions or systems, could have escalated into a major accident.

operator, in relation to a facility, means the person who has overall control of the facility.

2008 No 271Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008Schedule 1 Amendments

potential major hazard facility means:

- (a) a facility where Schedule 8 materials are present or likely to be present in a quantity that exceeds 10% of their threshold quantity but does not exceed their threshold quantity, or
- (b) a facility where the aggregate quantity ratio of Schedule 8 materials present or likely to be present at the facility exceeds 0.1 but does not exceed 1.0.

provisionally registered means provisionally registered under clause 175M.

registered means registered under clause 175R.

Schedule 8 material means a material mentioned in Table 1 to Schedule 8 or a material that belongs to one or more of the types, classes and categories mentioned in Table 2 to Schedule 8.

threshold quantity, in relation to a Schedule 8 material, means the threshold quantity for that material as specified in Schedule 8.

- (2) An aggregate quantity ratio of Schedule 8 materials present or likely to be present at a facility is to be determined using the following formula:

$$AQR = \frac{q_x}{Q_x} + \frac{q_y}{Q_y} + \dots + \frac{q_n}{Q_n}$$

where:

$q_x, q_y \dots q_n$ is the total quantity of each Schedule 8 material present or likely to be present at the facility.

$Q_x, Q_y \dots Q_n$ is the threshold quantity for each Schedule 8 material concerned.

However, a quantity of Schedule 8 material need not be included in the calculation if:

- (a) the quantity is less than 2% of the corresponding threshold quantity for the material, and
 - (b) the quantity is present in such conditions that it is incapable of triggering a major accident.
- (3) For the purposes of determining whether a facility is a major hazard facility, a potential major hazard facility or not such a facility, the quantity of a Schedule 8 material present or likely to be present at the facility is taken to include all amounts of the material present, including but not limited to the following:

-
- (a) for process vessels and related piping systems—the maximum amount of the material normally present in the process vessel or related piping system,
 - (b) for storage vessels including tanks—the maximum capacity of the storage vessel or tank, except where all of the following conditions apply:
 - (i) the storage vessel or tank is nominally empty and the mass of the Schedule 8 material present is as low as is reasonably practical,
 - (ii) the storage vessel or tank will not be filled at the facility,
 - (iii) a secure physical barrier covers the fill point and any other opening that could be used to fill the storage vessel or tank,
 - (iv) the storage vessel or tank is not connected to any pipe,
- Note.** This includes all tanks, whether above ground, mounded or underground.
- (c) for package or other container storage areas—the maximum quantity of the material that is likely to be present in the package or other container storage area,
 - (d) for pipes, piping and pipelines not included in paragraph (a)—the maximum quantity of materials contained in the pipes, piping or pipelines or the maximum quantity of material that could escape from the pipe, piping or pipeline in the event of its catastrophic failure (whichever is the greater).
- (4) In this Chapter, a material is *present or likely to be present* at a facility if:
- (a) it is reasonably foreseeable that the material will be present at the facility for any continuous period of 48 hours, or
 - (b) the material is able to be produced under reasonably foreseeable abnormal conditions at the facility (for example, conditions such as extreme weather).

175B Dangerous goods to which section 135A of the Act applies

- (1) For the purposes of this Chapter, dangerous goods that are Schedule 8 materials are declared to be dangerous goods to which section 135A of the Act applies.
- (2) This Chapter applies to dangerous goods that are Schedule 8 materials regardless of whether those goods are at a place of work or are for use at work.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1

Amendments

- (3) In this clause, *dangerous goods* has the same meaning as in section 135A of the Act.

Part 6B.2 Hazard identification and risk assessment

175C Extension of hazard identification and risk assessment provisions

- (1) Division 1 (General duties of controllers of premises) of Part 4.2 of Chapter 4 extends to operators of major hazard facilities (regardless of whether or not those facilities are places of work or are used for work).
- (2) A reference in Chapter 2 (Places of work—risk management and other matters) and Division 1 (General duties of controllers of premises) of Part 4.2 of Chapter 4 to occupational health and safety (however expressed) includes, where the hazard concerned is a hazard that arises from a major hazard facility, a reference to public health and safety (both at the facility and beyond).
- (3) Without limiting subclause (2), when identifying the hazards that arise from a major hazard facility, the operator of the facility must identify all foreseeable hazards that may lead to, or arise from, a major accident at the facility.

175D Regular risk assessments

- (1) An operator of a major hazard facility must review each risk assessment conducted for the purposes of clause 10 or 35 at the times required by clause 12 or 37, but in any case each risk assessment must be reviewed as follows:
 - (a) before a modification of the major hazard facility,
 - (b) after the occurrence of a major accident or near miss at the major hazard facility,
 - (c) when requested by WorkCover,
 - (d) at least once every 5 years.
- (2) The operator must make a record of each risk assessment and any review of a risk assessment.

Maximum penalty: Level 4.

Note. Clause 175ZD provides that any document or other record required to be created by an operator of a major hazard facility under this Chapter is to be retained by the operator for at least 15 years after the date of its creation.

Part 6B.3 Duties in relation to major hazard facilities

175E Duties in relation to major accidents at major hazard facilities

- (1) An operator of a major hazard facility must ensure that all persons (including members of the public) are not exposed to risks to their health and safety arising from a major accident occurring at the facility.

Maximum penalty: Level 4.

Note. Other general laws and specific legislation may provide that operators have other obligations with regard to the operation of the major hazard facility that relate to risks to property or the environment, both inside or beyond the facility.

- (2) Nothing in this clause is to be construed:
- (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of this clause, or
- (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.

Note. Section 10 (2) of the Act provides that a person who has control of any plant or substance used by people at work must ensure that the plant or substance is safe and without risks to health when properly used.

Part 6B.4 Notification regarding operation of major hazard facilities and potential major hazard facilities

175F Notification by operators and intended operators of major hazard facilities and potential major hazard facilities

- (1) A person who intends to be the operator of a major hazard facility or a potential major hazard facility must, within 3 months after the person forms the intention, notify WorkCover of the intention in accordance with clause 175G.

Note. Clause 175L provides that an operator must not operate a major hazard facility unless the facility is registered or provisionally registered.

Clause 175M provides that a notification under this clause is taken to be an application for the provisional registration of the facility.

- (2) WorkCover may, by notice in writing, require a person who, in WorkCover's opinion, is the operator of a facility (whether or not it is a major hazard facility or a potential major hazard facility) to submit a notification to WorkCover under this clause.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

- (3) Notification under subclause (2) must be given in accordance with clause 175G and within such period as is specified in WorkCover's notice to the person concerned.
- (4) A person who has provided a notification in relation to a potential major hazard facility or proposed potential major hazard facility under this clause to WorkCover must, while that person continues to operate that facility, provide a further notification to WorkCover in accordance with clause 175G every 12 months or at such longer intervals as is specified by WorkCover by notice in writing given to the person.
- (5) On receiving a notification under this clause, WorkCover is to send the person a written acknowledgement of the notification.
- (6) For the purposes of this clause, a person *intends to operate a major hazard facility or a potential major hazard facility* if:
 - (a) the person intends to operate a major hazard facility or a potential major hazard facility that is:
 - (i) designed but not constructed, or
 - (ii) under construction, or
 - (iii) constructed but not yet operational, or
 - (b) the person is operating a facility (not being a major hazard facility or a potential major hazard facility) and intends to make alterations to the facility that will result in the facility becoming a major hazard facility or a potential major hazard facility.
- (7) **Transitional provision**

A person who is operating a major hazard facility or a potential major hazard facility (or intends to) at the time of the commencement of this clause must notify WorkCover of that fact within 3 months of that commencement.
- (8) **Commencement**

This clause commences on 13 October 2008.
Maximum penalty (subclauses (1), (3), (4) and (7)): Level 4.

175G Content of notification

Notification given under clause 175F must:

- (a) be in the approved form, and

- (b) if the notification is being given by a corporation, be signed by the chief executive officer of the corporation or another officer of the corporation authorised by the chief executive officer.

175H WorkCover may request further information

On request from WorkCover, a person who has given notification under clause 175F must provide, at any reasonable time specified by WorkCover, such further information relating to the facility concerned as WorkCover requests.

Maximum penalty: Level 4.

175I Notification of change of operator of major hazard facility or potential major hazard facility

- (1) If an operator of a major hazard facility or a potential major hazard facility is replaced by another person as an operator of the facility, both the former operator and the new operator of the facility must ensure that WorkCover is notified of that change.

Maximum penalty: Level 4.

- (2) Notification under this clause must be given within one month after the former or new operator becomes aware, or should reasonably have been or become aware, of the circumstances giving rise to the obligation to notify.

175J Notification assessment fee

- (1) A person who provides WorkCover with a notification under this Part must pay to WorkCover a notification assessment fee in the amount (if any) specified by WorkCover.
- (2) WorkCover may specify different fee amounts (or no amount) for different types of notifications.

Part 6B.5 WorkCover may determine potential major hazard facilities to be major hazard facilities

175K WorkCover may determine a potential major hazard facility to be a major hazard facility

- (1) WorkCover may determine that a potential major hazard facility is a major hazard facility if it is of the opinion that there is a potential for a major accident to occur at the facility.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

- (2) WorkCover must not make a determination under this clause unless it has:
 - (a) consulted with the operator of the potential major hazard facility concerned, and
 - (b) given the operator reasons as to why it proposed to make the determination, and
 - (c) given the operator a reasonable opportunity to make representation as to why the determination should not be made.
- (3) A determination under this clause does not take effect until written notice of it is given to the operator of the facility concerned.

Note. An operator aggrieved by a decision to make a determination under this clause may apply to the Administrative Decisions Tribunal for a review of the decision—see clause 351 (1) (b1) (i).

Part 6B.6 Provisional registration and registration of major hazard facilities

Division 1 Major hazard facility must be registered

175L Major hazard facility must be registered or provisionally registered

- (1) An operator must not operate a major hazard facility unless the facility is registered or provisionally registered.
Maximum penalty: Level 4.
- (2) This clause commences on 13 April 2009.

Division 2 Provisional registration

175M WorkCover may provisionally register major hazard facilities

- (1) Subject to subclause (2), WorkCover may provisionally register a major hazard facility.
- (2) Without limiting the reasons for which provisional registration may be refused, WorkCover must refuse to provisionally register a major hazard facility if it is of the opinion that the following persons are not fit and proper persons to exercise control over the facility:
 - (a) if the operator is an individual—the operator,
 - (b) if the operator is a corporation—each director of the operator.

(3) A notification under clause 175F in relation to a major hazard facility is taken, for the purposes of this Part, to be an application for the provisional registration of the facility.

(4) A notification under clause 175F in relation to a potential major hazard facility that, after the notification, was determined under clause 175K to be major hazard facility, is taken, for the purposes of this Part, to be an application for the provisional registration of the facility that was made on the date of that determination.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to provisionally register a major hazard facility under this clause.

175N Duration of provisional registration

(1) Provisional registration of a major hazard facility continues in force for a period of 3 years (or such longer period as WorkCover may specify to the operator of the facility by notice in writing).

(2) However, provisional registration is terminated by the following:

- (a) the facility becoming registered under Division 3,
- (b) the provisional registration being cancelled under Division 4.

(3) A provisional registration has no effect while the provisional registration is suspended under Division 4.

175O Provisional registration subject to conditions

(1) Provisional registration of a major hazard facility is subject to:

- (a) the conditions set out in this Division, and
- (b) any general conditions applying to all provisionally registered major hazard facilities:
 - (i) that are published in the Gazette by WorkCover from time to time, and
 - (ii) notice of which has been given in writing to the operator by WorkCover, and
- (c) any conditions imposed on the provisional registration by WorkCover by notice in writing given to the operator.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to impose a condition on the provisional registration of a major hazard facility under this paragraph.

(2) An operator of a provisionally registered major hazard facility must comply with the conditions of that provisional registration.
Maximum penalty: Level 4.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

175P Conditions of provisional registration

Note. The provisional registration may be subject to other conditions under clause 175O (1) (b) and (c).

- (1) It is a condition of provisional registration of a major hazard facility that the operator of the facility must, within 6 months of the provisional registration or such longer period as WorkCover may allow, ensure that:
 - (a) a plan for the preparation of a safety report for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) is prepared and submitted to WorkCover, and
 - (b) provisional security arrangements (that comply with any requirements that are published in the Gazette by WorkCover from time to time) are prepared and implemented and details of those arrangements are submitted to WorkCover, and
 - (c) when preparing provisional security arrangements:
 - (i) details of those arrangements are provided to the Commissioner of Police, and
 - (ii) regard is taken of any written advice received from the Commissioner of Police, and
 - (d) provisional emergency arrangements (that comply with any requirements that are published in the Gazette by WorkCover from time to time) are prepared and implemented and details of those arrangements are submitted to WorkCover, and
 - (e) when preparing the provisional emergency arrangements:
 - (i) details of those arrangements are provided to:
 - (A) the Commissioner of the New South Wales Fire Brigades, and
 - (B) if the premises to which this clause applies are within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and
 - (ii) regard is taken of any written advice received from the Commissioner of the New South Wales Fire Brigades.
- (2) It is a condition of provisional registration of a major hazard facility that the operator of the facility must, within 12 months of the provisional registration or such longer period as WorkCover may allow, ensure that a security plan for the facility (that

complies with any requirements that are published in the Gazette by WorkCover from time to time) is prepared and submitted to WorkCover and implemented.

- (3) It is a condition of provisional registration of a major hazard facility that the operator of the facility must, within 2 years of the provisional registration or such longer period as WorkCover may allow, ensure that an application under clause 175Q for registration of the facility is made.
- (4) It is a condition of provisional registration of a major hazard facility that the operator of the facility must ensure that, at the time or times specified by WorkCover, such fees are paid to WorkCover as are fixed for the time being by WorkCover to cover expenses in connection with the regulation of facilities under this Part.
- (5) WorkCover may fix different fee amounts (or no amount) for different types of provisionally registered facility.

Division 3 Registration of major hazard facilities

175Q Application for registration

- (1) An operator of a major hazard facility may apply for the registration of the facility.
- (2) An application is to be made in writing to WorkCover and is to be:
 - (a) in the approved form, and
 - (b) accompanied by:
 - (i) a fee in such amount as WorkCover determines as the appropriate amount to cover expenses in connection with the processing of applications for the registration of a major hazard facility, and
 - (ii) such documents as WorkCover requires.

175R WorkCover may register major hazard facilities

- (1) Subject to subclause (3), WorkCover may register a major hazard facility.
- (2) Without limiting the reasons for which registration may be refused, WorkCover must refuse to register a major hazard facility if it is of the opinion that the following persons are not fit and proper persons to exercise control over the facility:
 - (a) if the operator is an individual—the operator,

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

- (b) if the operator is a corporation—each director of the operator.
- (3) Without limiting the reasons for which registration may be refused, WorkCover must not register a major hazard facility unless it is satisfied that:
 - (a) a safety management system for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) has been established and maintained, and
 - (b) a security plan for the facility that complies with the following requirements has been submitted to WorkCover and has been implemented:
 - (i) any requirements that are published in the Gazette by WorkCover from time to time,
 - (ii) that in preparing the security plan:
 - (A) a draft of the security plan was provided to the Commissioner of Police, and
 - (B) regard was taken of any written advice received from the Commissioner of Police, and
- Note.** The security plan submitted to WorkCover and implemented under clause 175P (2) may satisfy this requirement.
- (c) an emergency plan that complies with the following requirements has been submitted to WorkCover and been implemented:
 - (i) any requirements that are published in the Gazette by WorkCover from time to time,
 - (ii) that in preparing the emergency plan:
 - (A) a draft of the emergency plan was provided to:
 - (I) the Commissioner of the New South Wales Fire Brigades, and
 - (II) if the facility is within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and
 - (B) regard was taken of any written advice received from the Commissioner of the New South Wales Fire Brigades, and
 - (iii) that after the emergency plan was submitted to WorkCover, it was provided to:

-
- (A) the Commissioner of the New South Wales Fire Brigades, and
 - (B) if the facility is within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and
 - (d) a safety report for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) has been submitted to WorkCover.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to register a major hazard facility under this clause.

175S Duration of registration

- (1) Unless sooner suspended or cancelled, registration of a major hazard facility continues in force for a period of 5 years.
- (2) However, if an application for the renewal of the registration of a major hazard facility has been made to WorkCover before the registration's expiry and the application has not been finally dealt with, the registration continues in force until WorkCover either renews the registration of the facility or refuses the renewal.

175T Registration subject to conditions

- (1) Registration of a major hazard facility is subject to:
 - (a) the conditions set out in this Division, and
 - (b) any general conditions applying to all registered major hazard facilities:
 - (i) that are published in the Gazette by WorkCover from time to time, and
 - (ii) notice of which has been given in writing to the operator by WorkCover, and
 - (c) any conditions individually imposed on the registration by WorkCover by notice in writing.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to impose a condition on the registration of a major hazard facility under this paragraph.

- (2) An operator of a registered major hazard facility must comply with the conditions of that registration.

Maximum penalty: Level 4.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

175U Conditions of registration

Note. The registration may be subject to other conditions under clause 175T (1) (b) and (c).

- (1) It is a condition of registration of a major hazard facility that the operator of the facility must, at the time or times specified by WorkCover, ensure that such fees are paid to WorkCover as are fixed for the time being by WorkCover to cover expenses in connection with the regulation of facilities under this Part.
- (2) WorkCover may fix different fee amounts (or no amount) for different types of registered facility.

175V Renewal of registration

- (1) It is a condition of registration of a major hazard facility that the operator of the facility must ensure that an application for renewal of the registration of the facility is submitted to WorkCover at least 12 months before the expiry of the registration.
- (2) An operator is not required to comply with the condition set out in subclause (1) if the operator has notified WorkCover in writing that it will cease to operate the major hazard facility during that 12 month period.
- (3) An application for renewal of registration is to be made in writing to WorkCover and is to be:
 - (a) in the approved form, and
 - (b) accompanied by:
 - (i) a fee in such amount as WorkCover determines as the appropriate amount to cover expenses in connection with the processing of applications for the renewal of registration of a major hazard facility, and
 - (ii) such documents as WorkCover requires.
- (4) WorkCover may renew a registration of a major hazard facility.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to renew a registration of a major hazard facility under this clause.

Division 4 Provisions relating to both provisional registration and registration of major hazard facilities

175W Suspension and cancellation

- (1) WorkCover may suspend or cancel the provisional registration or registration of a major hazard facility.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to suspend or cancel provisional registration or registration of a major hazard facility under this clause.

- (2) Without limiting subclause (1), WorkCover may suspend or cancel the provisional registration or registration of a major hazard facility if it is satisfied that:
- (a) an operator of the facility has contravened a condition of the provisional registration or registration, or
 - (b) an operator of the facility has contravened a provision of the Act or this Regulation, or
 - (c) the provisional registration or registration was obtained on the basis of false or misleading information or the failure to disclose relevant information to WorkCover, or
 - (d) a major accident at the facility is imminent, or
 - (e) the safety management system, security plan, emergency plan or safety report for the facility is inadequate, or
 - (f) any of the following persons is not a fit and proper person to exercise control over the facility:
 - (i) if the operator is an individual—the operator,
 - (ii) if the operator is a corporation—any director of the operator.

Part 6B.7 Duties of employees at major hazard facilities

175X Duties of employees at major hazard facilities

An employee at a major hazard facility must:

- (a) follow the operator's procedures relating to the prevention and control of major accidents within the facility, and
- (b) follow the operator's provisional emergency arrangements or emergency plan in the event of a major accident occurring or in the event of the emergency procedures being activated, and

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

- (c) inform the operator, as soon as is practicable, of any circumstance of any kind that he or she considers capable of leading to a major accident, and
 - (d) without placing the employee or any other person at risk, take corrective action under those prevention and control and emergency procedures, consistent with the employee's training, even if such corrective action could interrupt the operation of the facility, and
 - (e) notify his or her supervisor of any corrective action taken.
- Maximum penalty: Level 4.

Part 6B.8 Miscellaneous

175Y Recording of major accidents, near misses and security breaches

- (1) If a major accident or near miss happens at a major hazard facility, the operator of the facility must, as soon as practicable:
 - (a) record the major accident or near miss, and
 - (b) investigate the major accident or near miss and determine, so far as is possible, its cause or likely cause, and
 - (c) record the results of that investigation and any such determination, and
 - (d) consult with the employees at the facility on ways of avoiding major accidents and near misses in the future.
 - (2) If a breach of security occurs at a major hazard facility, the operator of the facility must, as soon as practicable:
 - (a) record the breach of security, and
 - (b) investigate the breach of security and determine, so far as is possible, its cause or likely cause, and
 - (c) record the results of that investigation and any such determination, and
 - (d) consult with the employees at the facility on ways of preventing breaches of security in the future.
 - (3) The operator must retain a record created under this clause while the major hazard facility continues to operate.
- Maximum penalty: Level 4.

175Z Security

(1) **Access systems and other security**

The operator of a major hazard facility must establish and maintain a system of security for, and controlled access to, the facility.

(2) The system must, as far as practicable:

- (a) prevent access by unauthorised persons to the facility, and
- (b) prevent unauthorised actions at the facility, and
- (c) ensure that any element of the facility that could affect its safe operation (including security documents, computer hardware and software and boundary infrastructure) is secured.

(3) **Risk assessments and security**

When identifying the foreseeable hazards that arise from the operation of a major hazard facility that may lead to, or arise from, a major accident at the facility, the operator of the facility must identify the hazards that may be caused by a breach of security at the facility.

(4) The operator of a major hazard facility must review a risk assessment, and any measures adopted to control the risk, relating to a hazard arising from a major accident caused by a breach of security at the facility whenever:

- (a) there is evidence that the risk assessment is no longer valid, or
- (b) a significant change is proposed in the facility or in work practices or procedures to which the risk assessment relates, or
- (c) the Commissioner of Police has directed that such a review take place,

and, in any case, at least once every 2 years.

(5) In carrying out such a risk assessment, the operator of the major hazard facility must take into account any advice received from the Commissioner of Police.

Maximum penalty: Level 4.

175ZA Informing, instructing and training employees

(1) The operator of a major hazard facility must provide the operator's employees with such information, instruction and training in relation to:

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008

Schedule 1 Amendments

- (a) all major accidents that could foreseeably occur at the facility, and
- (b) all hazards that could cause, or contribute to causing, those major accidents, and
- (c) the implementation of control measures to eliminate or control the risk of major accidents, and
- (d) the content and operation of any security plan for the facility generally, and
- (e) the content and operation of any safety management system for the facility generally,

as are necessary to enable the employees to perform their work (including the actions required of the employees under any security plan, emergency plan and any safety role developed for employees) in a manner that is safe and without risks to health.

- (2) The operator must ensure that the information, instruction and training provided under this regulation are recorded, monitored, reviewed and revised in order for them to remain relevant and effective.

Maximum penalty: Level 4.

175ZB Non-employees at the facility

- (1) The operator of a major hazard facility must ensure that any person other than an employee of the operator who enters the facility is, as soon as possible after the person enters:
 - (a) informed about the hazards at the facility, and
 - (b) instructed in the safety precautions the person should take while at the facility, and
 - (c) instructed in the actions the person should take in the event of an emergency plan being activated while he or she is at the facility.

- (2) The information and instruction (and the timing of its provision) must be commensurate with the risk to health and safety concerned.

Maximum penalty: Level 4.

175ZC Operator to retain records of training

An operator of a major hazard facility must retain records in a suitable form of all training required by clause 13 and this Chapter to be provided to employees at the facility for at least 5 years after the date of creation of the record concerned.

Maximum penalty: Level 1.

175ZD Records

- (1) Unless this Chapter provides otherwise, any document or other record required to be created by an operator of a major hazard facility under this Chapter is to be retained by the operator for at least 15 years after the date of its creation.

Maximum penalty: Level 1.

- (2) Despite subclause (1), the operator of a major hazard facility must retain the following documents and records for at least 5 years after the date of the document or record's creation:

- (a) a document or record relating to a plan for the preparation of a safety report for the facility prepared under clause 175P (1) (a),
- (b) a document or record relating to any provisional security arrangements prepared and implemented under clause 175P (1) (b),
- (c) a document or record relating to any provisional emergency arrangements prepared and implemented under clause 175P (1) (d).

Maximum penalty: Level 1.

- (3) A person who has notified WorkCover of an intention to operate a major hazard facility or a potential major hazard facility under clause 175F must retain any documents and records relating to that notification for at least 5 years after the date of the document or record's creation.

Maximum penalty: Level 1.

- (4) A person who is required to keep documents or records under this clause must make those documents or records available for inspection by an inspector or an authorised representative in accordance with a request by the inspector or authorised representative and, in any event, no later than 7 days after the date of the request.

Maximum penalty: Level 1.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

(5) In this clause:

authorised representative means an authorised representative within the meaning of Division 3 of Part 5 of the Act who is exercising functions under that Division.

175ZE Providing relevant information to other authorities

- (1) WorkCover may give in the course of its administration of this Chapter any information it has obtained in the course of that administration to other government departments, relevant local government councils and the emergency services (whether of this State or of the Commonwealth, another State or a Territory).
- (2) In this clause, *emergency service* includes the Roads and Traffic Authority.

175ZF Co-ordination of plans and reports

- (1) WorkCover may direct operators of different major hazard facilities to co-ordinate the preparation of any plan, report or other document.
- (2) In order to comply with a direction under subclause (1) relating to health and safety, an operator who is the subject of such a direction must provide to the other operators subject to the direction information concerning any circumstances at the operator's facility that could constitute a hazard in relation to the other operators' facilities.
Maximum penalty: Level 4.

[2] Clauses 176 and 176A

Renumber clauses 175 (Definitions) and 176 (Application) as clauses 176 and 176A respectively.

[3] Clause 341 Notification of incidents—additional incidents to be notified

Insert after clause 341 (j):

- (k) in relation to a major hazard facility (as defined in Chapter 6B)—if not already covered by another paragraph of this clause, a major accident or near miss (as defined in that Chapter).

[4] Clause 344 Non-disturbance of places and plant involved in serious incidents—additional serious incidents

Insert after clause 344 (c):

- (d) in relation to a major hazard facility (as defined in Chapter 6B)—if not already covered by another paragraph of this clause, a major accident (as defined in that Chapter).

[5] Clause 351 Decisions subject to review by the Administrative Decisions Tribunal: section 36 of the Act

Insert after clause 351 (1) (b):

- (b1) decisions under Chapter 6B:
 - (i) that determine that a potential major hazard facility is a major hazard facility, or
 - (ii) to refuse provisional registration or registration of a major hazard facility, or
 - (iii) to impose a condition on the provisional registration or registration of a major hazard facility, or
Note. This subparagraph relates to conditions imposed on provisional registrations or registrations of major hazard facilities under clauses 175O (1) (c) and 175T (1) (c), not general conditions applying to all provisional registrations or registrations under clauses 175O (1) (b) and 175T (1) (b).
 - (iv) to suspend or cancel the provisional registration or registration of a major hazard facility, or
 - (v) to refuse to renew the registration of a major hazard facility,

[6] Clause 351 (2A)–(2C)

Insert after clause 351 (2):

- (2A) If a person has provided a notification under clause 175F in relation to a facility or proposed facility to WorkCover and WorkCover has not within 3 months of that notification provisionally registered the facility or proposed facility under clause 175M, WorkCover is taken, for the purposes of an application for review by the Administrative Decisions Tribunal, to have refused the provisional registration.
- (2B) WorkCover is taken, for the purposes of an application for review by the Administrative Decisions Tribunal, to have refused to register a major hazard facility if it does not determine an application in relation to the registration within 12 months after the date of lodgment of the application.

2008 No 271

Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

(2C) Subclause (2) does not apply to any decision under Chapter 6B (as referred to in subclause (1) (b1)).

[7] **Clause 356 False or misleading information in applications**

Insert after clause 356 (2) (b):

- (b1) a notification under clause 175F,
- (b2) an application under Chapter 6B,

[8] **Clause 360 Notes**

Insert “(other than in Schedule 8 to this Regulation)” after “text of this Regulation”.

[9] **Schedule 2 Penalty notices**

Insert in appropriate order under the heading **Offence under this Regulation**:

Clause 175D	1,000
Clause 175E (1)	1,000
Clause 175F (1), (3), (4) or (7)	600
Clause 175I (1)	500
Clause 175L (1)	600
Clause 175X	200
Clause 175Y	600
Clause 175Z	1,000
Clause 175ZA	600
Clause 175ZB	600
Clause 175ZD	500

[10] **Schedule 8**

Insert after Schedule 7:

Schedule 8 Identification of a major hazard facility

(Clause 175A)

Determination of threshold quantities

The following rules apply to the determination of threshold quantities from Table 1 and Table 2:

- (a) if the material is specifically listed in Table 1, the threshold quantity is to be determined from Table 1, and
- (b) if a material is not specifically listed in Table 1, the appropriate threshold quantity is to be determined from Table 2 from the description which best applies to the material, and
- (c) if more than one of the descriptions in Table 2 applies to a material, the description with the lowest threshold quantity is to be used.

Table 1

Material	UN numbers included under name	Threshold quantity (tonnes)
ACETONE CYANOHYDRIN	1541	20
ACETYLENE	1001	50
ACROLEIN	1092	200
ACRYLONITRILE	1093	200
ALLYL ALCOHOL	1098	20
ALLYLAMINE	2334	200
AMMONIA, ANHYDROUS, LIQUEFIED or AMMONIA SOLUTIONS, relative density less than 0.880 at 15°C in water, with more than 50% ammonia	1005	200
AMMONIUM NITRATE, with not more than 0.2% combustible substances, including any organic substances calculated as carbon, to the exclusion of any other added material	1942	2500
AMMONIUM NITRATE FERTILIZERS	2067 2068 2069 2070	5000
ARSENIC PENTOXIDE, Arsenic (V) Acid and other salts	1559	10
ARSENIC TRIOXIDE, Arsenious (III) Acid and other salts	1561	0.10
ARSINE	2188	0.01

2008 No 271Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

Material	UN numbers included under name	Threshold quantity (tonnes)
BROMINE or BROMINE SOLUTIONS	1744	100
CARBON DISULFIDE	1131	200
CHLORINE	1017	25
DIOXINS		0.10
ETHYL NITRATE		50
ETHYLENE DIBROMIDE	1605	50
ETHYLENE OXIDE	1040	50
ETHYLENEIMINE	1185	50
FLUORINE	1045	25
FORMALDEHYDE	1198 2209	50
HYDROFLUORIC ACID SOLUTION (greater than 50%)	1790	50
HYDROGEN	1049	50
HYDROGEN CHLORIDE		
—Anhydrous	1050	250
—Refrigerated Liquid	2186	250
HYDROGEN CYANIDE	1051 1614	20
HYDROGEN FLUORIDE	1052	50
HYDROGEN SULFIDE	1053	50
LP GASES	1011 1012 1075 1077 1978	200
METHANE or NATURAL GAS	1971 1972	200
METHYL BROMIDE	1062	200
METHYL ISOCYANATE	2480	0.15

Material	UN numbers included under name	Threshold quantity (tonnes)
OXIDES OF NITROGEN, including nitrous oxide, nitrogen dioxide and nitrogen trioxide	1067	50
	1070	
	1660	
	1975	
	2201	
	2421	
OXYGEN	1072	2000
	1073	
PHOSGENE	1076	0.75
PROPYLENE OXIDE	1280	50
PROPYLENEIMINE	1921	200
SODIUM CHLORATE, solid	1495	200
SULFUR DICHLORIDE	1828	1
SULFUR DIOXIDE, LIQUEFIED	1079	200
SULFURIC ANHYDRIDE (Alt: SULFUR TRIOXIDE)	1829	75
TITANIUM TETRACHLORIDE	1838	500
TOLUENE DIISOCYANATE	2078	200

Notes to Table 1.

- 1 The UN number listed against the named material is given for information only. It does not restrict the meaning of the name, which also applies to material that falls outside the UN number, for example, because it is too dangerous to transport or is part of a mixture covered by another UN number. However, any material that is covered by the listed UN numbers must be included in the quantity of the material named.
- 2 If a Schedule 8 material is part of a mixture, the equivalent quantity should be calculated as shown by Example 2 in Chapter 16 of the "National Code of Practice for the Control of Major Hazard Facilities" [NOHSC: 2016 (1996)].

Table 2

Material	Description	Threshold quantity (tonnes)
Explosive materials	Explosives of Class 1.1A	10

2008 No 271Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

Material	Description	Threshold quantity (tonnes)
	All other Explosives of Class 1.1	50
	Explosives of Class 1.2	200
	Explosives of Class 1.3	200
Compressed and liquefied gases	Compressed or liquefied gases of Class 2.1 or Subsidiary Risk 2.1	200
	Liquefied gases of Subsidiary Risk 5	200
	Compressed or liquefied gases that meet the criteria for Very Toxic in Table 4 to this Schedule	20
	Compressed or liquefied gases that meet the criteria for Toxic in Table 4 to this Schedule	200
Flammable materials	Liquids that meet the criteria for Class 3 Packing Group I (Except for crude oil in remote locations)	200
	Crude oil in remote locations that meets the criteria for Class 3 Packing Group I	2000
	Liquids that meet the criteria for Class 3 Packing Group II or III	50,000
	Liquids with flashpoints <61°C kept above their boiling points at ambient conditions	200
	Combustible solids that meet the criteria for Class 4.1 Packing Group I	200
	Spontaneously combustible materials that meet the criteria for Class 4.2 Packing Group I or II	200
	Materials which liberate flammable gases or react violently on contact with water and that meet the criteria for Class 4.3 Packing Group I or II	200
	Materials which belong to Classes 3 or 8 Packing Group I or II which have Hazchem codes of 4WE (materials which react violently with water)	500

Material	Description	Threshold quantity (tonnes)
Oxidizing materials	Oxidizing materials identified in the ADG Code as being goods too dangerous to be transported	50
	Oxidizing materials that meet the criteria for Class 5.1 Packing Group I or II	200
Peroxides	Peroxides identified in the ADG Code as being goods too dangerous to be transported	50
	Organic Peroxides that meet the criteria for Class 5.2	200
Toxic solids and liquids	Materials that meet the criteria for Very Toxic in Table 4 to this Schedule	20
	Materials that meet the criteria for Toxic in Table 4 to this Schedule	200

Notes to Table 2.

- 1 **ADG Code** means the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- 2 **Class** means the Class of dangerous goods referred to in the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- 3 **Packing Group** means the particular Packing Group determined from the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- 4 Materials referred to in the Table belong to a Class or Packing Group regardless of whether or not they are packaged for transport or under pressure.
- 5 The quantities specified for explosives relate to the weight of explosive exclusive of any non-explosive components.
- 6 If explosives of different Hazard Divisions are present in the same area or storage, all of the explosives shall be classified in accordance with Table 3 to this Schedule.

Table 3: Determination of precedence of hazard division

Hazard Division	1.1	1.2	1.3	1.4	1.5	1.6
1.1	1.1	1.1	1.1	1.1	1.1	1.1
1.2	1.1	1.2	1.1	1.2	1.1	1.2

2008 No 271Occupational Health and Safety Amendment (Major Hazard Facilities)
Regulation 2008

Schedule 1 Amendments

Hazard Division	1.1	1.2	1.3	1.4	1.5	1.6
1.3	1.1	1.1	1.3	1.3	1.1	1.1
1.4	1.1	1.2	1.3	1.4	1.5	1.6
1.5	1.1	1.1	1.1	1.5	1.5	1.5
1.6	1.1	1.2	1.1	1.6	1.5	1.6

Notes to Table 3.

- 1 The precedence of hazard division of explosives of two different hazard divisions is the hazard division determined by taking the hazard division of one explosive in the vertical hazard division column of Table 3, and the hazard division of the other explosive in the horizontal hazard division column of the Table, and reaching the place in the Table where the two columns intersect.
- 2 If explosives of more than two hazard divisions are present together, the precedence of hazard division of those explosives is determined by taking any two of those hazard divisions and determining their precedence of hazard division in accordance with Note 1, then taking that collective hazard division and another of the hazard divisions and determining their precedence of hazard division in accordance with Note 1 and then continuing this process until all hazard divisions present have been considered.

Table 4: Criteria for toxicity

Description	Oral toxicity¹ LD₅₀ (mg/kg)	Dermal toxicity² LD₅₀ (mg/kg)	Inhalation toxicity³ LC₅₀ (mg/L)
Very Toxic	LD ₅₀ ≤ 5	LD ₅₀ ≤ 40	LC ₅₀ ≤ 0.5
Toxic	5 < LD ₅₀ ≤ 50	40 < LD ₅₀ ≤ 200	0.5 < LC ₅₀ ≤ 2

Key

- 1 In rats
- 2 In rats or rabbits
- 3 4 hours in rats

Note to Table 4.

The criteria for toxicity are defined according to the *Australian Code for the Transport of Dangerous Goods by Road and Rail* and its appendices.

BY AUTHORITY