



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

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 25th day of July 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under sections 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.

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Regulations

- 1 Title**
 These regulations are the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016.
- 2 Commencement**
 These regulations come into force on 1 September 2016.
- 3 Principal regulations**
 These regulations amend the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (the **principal regulations**).
- 4 Enacting statement amended**
 In the enacting statement, after “212,”, insert “213, 215,”.
- 5 Regulation 3 amended (Application)**
 After regulation 3(2)(e), insert:
 (ea) a facility operated by the Armed Forces where munitions are stored; or

6 New regulation 11A inserted (Authorisation of certain facilities)

Before regulation 12, insert:

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.

7 Regulation 12 amended (Duty of operators to notify WorkSafe)

Replace regulation 12(1) with:

- (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.

8 Regulation 13 amended (Duty of operators of proposed facilities to notify WorkSafe)

In regulation 13(1), after “must”, insert “, in order to have the proposed facility designated,”.

9 Regulation 22 amended (Conditions on designations of major hazard facilities)

- (1) In regulation 22(1), before “WorkSafe”, insert “For the purpose of section 208 of the Act,”.
- (2) After regulation 22(2), insert:
 - (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.

10 Regulation 45 amended (Duty to prepare safety case)

After regulation 45(3), insert:

- (3A) The safety case given to WorkSafe must be accompanied by the relevant fee for assessing the safety case under regulation 70.

11 Regulation 48 amended (WorkSafe must notify operator of decision)

(1) Before regulation 48(1), insert:

- (1AA) WorkSafe must assess a safety case that is given to WorkSafe, along with the relevant fee, in accordance with regulation 45.
- (2) In regulation 48(1), after “receiving a safety case or an amended safety case”, insert “and the relevant fee”.

12 Regulation 52 amended (Duty to revise safety case in certain situations)

After regulation 52(2), insert:

- (2A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.

13 Regulation 53 amended (WorkSafe may request revised safety case)

After regulation 53(1), insert:

- (1A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.

14 Regulation 54 amended (Duty to give revised safety case within 5 years)

After regulation 54(1), insert:

- (1A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.

15 New regulations 70 to 74 and cross-heading inserted

After regulation 69, insert:

Fees and levies

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.

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.

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:
- $$\$L1 = \$A \times (M \div 12)$$
- \$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.

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.

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.

16 Schedule 1 amended

In Schedule 1, after Part 1, insert the Part 2 set out in Schedule 1 of these regulations.

17 New Schedule 8 inserted

After Schedule 7, insert the Schedule 8 set out in Schedule 2 of these regulations.

Schedule 1
New Part 2 inserted into Schedule 1

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Part 2
Provisions relating to Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016

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.

Schedule 2

New Schedule 8 inserted

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Schedule 8

Fees and levies

rr 70, 72

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.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 September 2016, amend the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 (the **principal regulations**) by—

- exempting munitions storage facilities operated by the Armed Forces from the operation of the principal regulations;
- imposing fees for the assessment of safety cases of upper tier major hazard facilities and annual levies for all designated major hazard facilities;
- making further amendments clarifying the operation of the designation scheme under Part 2 of the principal regulations.

The amendments to the principal regulations are as follows:

Regulation 4 amends the enacting statement of the principal regulations by adding reference to additional provisions of the Health and Safety at Work Act 2015 (the **Act**) that authorise the making of regulations under the Act.

Regulation 5 amends regulation 3(2) by inserting *new paragraph (ea)* which exempts munitions storage facilities operated by the Armed Forces from the operation of the principal Regulations. The reason for this exemption is that applying the principal Regulations to those facilities could adversely affect public security or national defence as a consequence of the divulgence of sensitive information. Further, there are adequate control measures in place at the facilities to minimise the risk of a major incident occurring.

Regulation 6 inserts *new regulation 11A* to clarify the requirement for designation. *New regulation 11A* provides that facilities with an inventory of specified hazardous substances that equals or exceeds the lower threshold must be designated.

Regulation 7 amends regulation 12 to clarify that the purpose of notification is to obtain designation of the facility. *New subclause (1)* restates current regulation 12(1) but limits its operation to facilities existing on 4 April 2016. *New subclause (1A)* makes clear that the notification provisions apply to under-threshold facilities that might in the future be developed into over-threshold facilities.

Regulation 8 amends regulation 13 to clarify the purpose of notification.

Regulation 9 amends regulation 22 by clarifying the link between designation conditions and the authorisation scheme in subpart 2 of Part 5 of the Act and providing that giving notification under *new regulation 74* is one of those conditions.

Regulation 10 amends regulation 45 by providing that a safety case given to WorkSafe must be accompanied by the safety case assessment fee required by *new regulation 70*.

Regulation 11 amends regulation 48 by clarifying WorkSafe's obligation to assess a safety case that a facility operator has provided in accordance with regulation 45 along with the relevant fee.

Regulation 12 amends regulation 52 by providing that a revised safety case given to WorkSafe must be accompanied by the relevant safety case assessment fee.

Regulation 13 makes a similar amendment to regulation 53 regarding a revised safety case given to WorkSafe on request.

Regulation 14 makes a similar amendment to regulation 54 regarding a safety case that is revised after 5 years.

Regulation 15 inserts *new regulations 70 to 74*, which relate to safety case assessment fees and annual levies.

- *New regulation 70* imposes fees for the assessment of safety cases and revised safety cases for upper tier major hazard facilities (as designated). The fees vary for a number of defined types of facility and are set out in *Parts 1 and 2 of new Schedule 8*. A discounted fee is prescribed for additional facilities operated by the same person under safety management systems that are substantially the same.
- *New regulation 71* allows WorkSafe to refund a safety case assessment fee if the safety case is withdrawn by the facility operator.
- *New regulation 72* imposes an annual levy on all major hazard facilities (as designated). The levy amounts vary according to types of facility and are set out in *Part 3 of new Schedule 8*. For the first year of a facility's operation, the levy is calculated by WorkSafe according to a stated formula. The timing of payment is provided for, but the operator may request an extension of time. Unpaid levy is recoverable by WorkSafe as a debt.
- *New regulation 73* requires the Minister to review the amounts of the new fees and levies within 5 years after the commencement of these amendment regulations.
- *New regulation 74* requires a facility operator to notify WorkSafe of certain changes at the facility. *New regulation 74(1)* requires the operator of a major hazard facility to notify WorkSafe of changes to the use of specific hazardous substances, if such a change results in the facility being of a different type, for which a different annual levy is payable. *New regulation 74(2)* requires the operator of a proposed facility, who has given notification under regulation 13, to notify WorkSafe if the inventory of specified hazardous substances equals or exceeds the lower threshold.

Regulation 16 amends Schedule 1 of the principal regulations by inserting *new Part 2*, stating that the new Part is set out in *Schedule 1* of these regulations.

Regulation 17 inserts *new Schedule 8* in the principal regulations, stating that the new schedule is set out in *Schedule 2* of these regulations.

Schedule 1 sets out *new Part 2 of Schedule 1* of the principal regulations. *Part 2* contains transitional provisions relating to these amending regulations. *Clause 4* of the new Part provides that the requirement for designation in *new regulation 11A* does not apply to existing facilities for which late notification was given under regulation 12

until they are designated. *Clause 5* exempts from annual levy in the first year of operation facilities that were designated before the commencement of these regulations.

Schedule 2 sets out *new Schedule 8* of the principal regulations. *New Schedule 8* defines a number of types of facility, for the purpose of the schedule, and sets out the safety case assessment fees for upper tier major hazard facilities in *Part 1* (new safety case) and *Part 2* (revised safety case). The amounts of annual levy for all designated major hazard facilities are set out in *Part 3*.

Regulatory impact statement

The Ministry of Business, Innovation and Employment produced a regulatory impact statement on 15 June 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/ris-full-cost-recovery-regulatory-functions-mhf.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 July 2016.

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