

EXPLANATORY STATEMENT

Statutory Rules 1990 No.i31

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) REGULATIONS

(Issued by the authority of the Minister for Industrial Relations).

Section 111 of the Industrial Chemicals (Notification and Assessment) Act 1989 (the Act) authorises the making of regulations•

The Act establishes a notification and assessment system for industrial chemicals to aid in the protection of people at work, public health and the environment. The regulations prescribe various matters which are necessary for the operation and administration of that system.

Sections 1 and 2 of the Act commenced on the day on which the Act received the Royal Assent. By the operation of section 2 of the Act the remaining provisions, including section 111, will commence on 18 July 1990.

Section 4 of the Acts interpretation Act 1901 authorises the making of regulations under an Act before the provision containing the regulation making power in the Act concerned comes into effect. Regulations made in those circumstances commence on the same day as the provision containing the regulation making power.

Details of the regulations made under the Act are attached.

Regulation 1; Citation

This gives the short title of the regulations.

Regulation 2; Interpretation

The term "the Act" is defined as meaning, unless the contrary intention appears, the Industrial Chemicals (Notification and Assessment) Act 1989.

Regulations 3 and 4: Prescribed Data

Section 5 of the Act defines the term "basic information" in relation to a chemical as meaning the information specified in the definition.

Paragraph (f) of the definition refers to:

"prescribed physical and chemical data about the chemical, not being data that would reveal the chemical's composition".

Subregulation 3(1) prescribes physical and chemical data for the purposes of paragraph (f) of the definition of "basic information".

Paragraph (g) of the definition of "basic information" refers to:

"prescribed data relating to the health effects or the environmental effects of the chemical".

Subregulation 4(1) prescribes data relating to the health and environmental effects of a chemical for purposes of paragraph (g) of the definition of "basic information".

Subregulations 3(2) and 4(2) provide that the data prescribed in subregulations 3(1) and 4(1) respectively does not include data which has not been made available to the Director (who will administer the scheme established by the Act). This is consequential upon section 24 of the Act, which empowers the Director, in certain circumstances, to waive or vary the requirements contained in the Act that a person applying for an assessment certificate for a new industrial chemical must provide certain information.

Regulation 5: Prescribed form of inventory

The scheme established by the Act provides for the Director to keep an inventory of existing chemicals and for the inclusion in the inventory of new chemicals. Subsection 11(2) of the Act requires the inventory to be kept in the prescribed form.

Regulation 5 prescribes the form in which the inventory is to be kept. In accordance with subsection 12(2) of the Act, paragraph 5(a) provides that the inventory is to be divided into a confidential section and a non-confidential section.

Regulation 6; Inspection of Inventory

Section 15 of the Act provides that copies of the non-confidential section of the inventory must be available either for sale to the public or for inspection by the public at the prescribed times.

Regulation 6 prescribes the times and the place at which the non-confidential section of the inventory will be available for inspection.

No provision is made at this stage for the sale of the inventory.

Regulation 7; Prescribed International Inventory of Chemicals

Subsection 24(1) of the Act provides that where a new chemical is listed in a prescribed international inventory of chemicals and the Director is satisfied that, because of the listing, adequate information about particular matters concerning the chemical is available, the Director may waive the requirement that a person seeking an assessment certificate for the chemical must provide that information.

For the purposes of that provision four international chemical inventories are prescribed by regulation 7.

Regulation 8: Prescribed Information - Summary Reports

Subsection 35(2) of the Act provides that a summary report of the assessment of a chemical must contain the information specified in that subsection, including, under paragraph (d) of the subsection, "any other prescribed information".

For that purpose, regulation 8 prescribes an abstract of the summary of the health, safety and environmental matters contained in the assessment report prepared in respect of a chemical.

Regulation 9: Application form - Section 55 of The Act

Under sections 51 and 52 of the Act the Minister may declare certain chemicals to be "priority existing chemicals". Where a chemical has been declared to be a "priority existing chemical" a person may apply under subsections 55(1) or (2) of the Act for the assessment of the chemical. Such applications are to be in the prescribed form.

Regulation 9 prescribes the forms to be used for applications under section 55 of the Act. The forms are set out in Schedule 1 to the regulations.

Regulation 10; Inspection of Reports

Where a chemical has been assessed under the Act the Director is required, by section 34, to cause a full public report of the assessment to be prepared.

Subsection 78(1) of the Act requires copies of such a report to be available for inspection at the prescribed time.

Regulation 10 prescribes the time and the place at which copies of the full public report about a chemical may be inspected by the public.

Regulation 11; Inspection of Material Safety Data Sheets

"Material Safety Data Sheet" is defined in section 5 of the Act as a written statement containing specified information about a chemical, product or substance. For chemicals for which an assessment certificate has been issued on the basis of an assessment under the Interim Notification Scheme referred to in section 46 of the Act, the Material Safety Data Sheet will be available instead of the full public assessment report.

Subsection 78(2) of the Act provides that Material Safety Data Sheets are to be available for inspection by the public at the prescribed times.

Regulation 11 prescribes the times and the place at which Material Safety Data Sheets are to be available for inspection by the public.

Regulation 12; Inspection of Chemical Gazette

Various provisions of the Act require the publication in the Chemical Gazette of notices under the Act.

Section 107 of the Act requires a copy of each Chemical Gazette that contains such a notice to be available for inspection by the public at the prescribed places at the prescribed time.

Regulation 12 prescribes the times and the place at which the Chemical Gazette is to be available for inspection by the public.

Regulation 13; Fees

Subsection 110(1) of the Act provides that the Regulations may prescribe fees, or a method calculating fees, in respect of the matters specified in that subsection.

Regulation 13 and Schedule 2 to the Regulations prescribe the fees which are to be payable in respect of those matters•

The fees have been calculated by the National Occupational Health and Safety Commission on the basis of a 50% recovery of costs.

Regulation 14; Waiver of Fees

Subsection 110(5) of the Act provides that the Regulations may prescribe circumstances in which the Director may waive, wholly or in part, or may remit, fees that would otherwise be payable.

It is expected that there will be occasions when two or more applications in respect of the same matter will be received under either subsection 55(1) or (2) of the Act.

It is proposed that, in such circumstances, the total amount of fees paid should equal the amount of the relevant prescribed fee in respect of a single application:

this is consistent with the 50% cost recovery basis on which the amounts of the fees have been calculated.

Accordingly, regulation 14 provides that where two or more applications are received in respect of the same matter under either subsection 55(1) or 55(2) of the Act, the Director may waive part of the fee payable in respect of each application, so that the total of the fees paid in respect of those applications equals the fee prescribed in relation to a single application.

Regulation 15: Remission of Fees

It is expected that in some cases an application, notification, statement or nomination lodged under the Act will be withdrawn before work on the application etc has been completed, but after the prescribed fee has been paid.

Regulation 15 empowers the Director, in such circumstances, to remit so much of the fee as he or she sees fit:

 this is consistent with the 50% cost recovery basis on which the amount of the fees have been calculated.

Regulation 16: Payment of Fees

Subsection 110(2) of the Act provides that fees are due and payable in such manner and at such time or times as **are** prescribed.

Regulation 16 provides that the prescribed fee must be paid at the time at which the application, statement, nomination or notification to which it applies is lodged.

Schedule I - Forms I and 2

Form I is the prescribed form in which an application under subsection 55(1) of the Act must be made.

Form 2 is the prescribed form in which an application under subsection 55(2) of the Act must be made.

All other applications under the Act are required to be in the "approved form" - that is, in a form approved by the Director. They are not, therefore, prescribed in the Regulations.

Schedule 2 - Fees

Schedule 2, together with regulation 13, contains the fees prescribed pursuant to subsection 110(1) of the Act:

 at this stage no fees are prescribed in respect of an inspection of a public report under section 78 of the Act; or

 in respect of an inquiry under section 79 of the Act, that is, an inquiry to obtain information for the protection of occupational health and safety, public health or the environment;

 it is considered that the public interest will be best served by allowing such inspections and inquiries to be made free of charge.