

Occupational Health and Safety (Maritime Industry) Regulations 1995 No. 17

EXPLANATORY STATEMENT

Statutory Rules 1995 No. 17

Issued by the Authority of the Minister for Transport

Occupational Health and Safety (Maritime Industry) Act 1993

Occupational Health and Safety (Maritime Industry) Regulations

Section 121 of the *Occupational Health and Safety (Maritime Industry) Act 1993* provides that the Governor-General may make regulations for the purposes of the Act.

The Act provides a framework within which ship operators and maritime industry employees may co-operate to address health and safety matters on board ships and offshore industry mobile units. The scheme provided for by the Act took effect on 18 July 1994.

The bulk of the Regulations is concerned with prescribing the form of notices and reports for purposes of the Act, and other requirements in relation to notices and reports.

In addition, the Regulations:

- (a) provide for the appointment of a returning officer for the purpose of the election of a health and Safety representative;
- (b) provide for the division of samples taken by an inspector for purposes of an investigation;
- (c) prohibit the unnecessary disturbance of the site of an accident or dangerous occurrence;
- (d) require operators to keep copies of reports of accidents and dangerous occurrences for 5 years; and
- (e) require operators to provide statistical reports.

Details of the Regulations are in the Attachment.

The Regulations commenced on the date of their notification in the Gazette.

Regulation 6 - Form of provisional improvement notices

Subsection 58(1) of the Act. provides that a health and safety representative may issue a provisional improvement notice to the person in command if the health and safety representative thinks agreement cannot be reached in a reasonable time to rectify a contravention or likely contravention of the Act, where that contravention may affect a person in the work group.

Regulation 6 provides that a provisional improvement notice must be in accordance with Form 1 in the Schedule to the Regulations.

Regulation 7 - Taking samples for testing etc.

The Act provides for investigation by inspectors to determine if the Act is being complied with in relation to an accident or dangerous occurrence. Subsection 91(1) of the Act provides that, in conducting an investigation, an inspector may take a sample of any plant, substance or thing.

Regulation 7 provides that, where a sample is taken, it must, if possible, be divided into 3 parts. one part of the sample is to be given to the operator and one part is to be retained by the inspector. The inspector is required to arrange for the third part of the sample to be inspected, examined, measured or tested.

Where the sample cannot be practicably *divided into* parts, the inspector is required to arrange for the whole of the sample to be inspected, examined, measured or tested. An inspector is required to take reasonable care of anything that he or she has taken possession of, and must take reasonable steps to ensure that any sample is not contaminated.

Regulation 8 - Form of certain notices

Subsection 91(2) of the Act provides that, where an inspector takes possession of any plant, substance or thing, the inspector must inform the person in command, the person who owns the plant, substance or thing and the health and safety representative. Paragraph 8(a) provides that such notice must be in accordance with Form 2 in the Schedule to the Regulations.

Subsection 92(1) of the Act provides that, where an inspector conducting an investigation considers that part of a particular workplace, plant, substance or thing must not be disturbed, the inspector may, by written notice, direct that it not be disturbed. Paragraph 8(b) provides that such notice must be in accordance with Form 3 in the Schedule to the Regulations.

Subsection 93(1) of the Act provides that, following an investigation, an inspector may, by notice in writing, prohibit a specified activity. Paragraph 8(c) provides that such notice must be in accordance with Form 4 in the Schedule to the Regulations.

Subsection 98(1) of the Act provides that, following an investigation, an inspector may, by notice in writing, specify a period within which specified action must be taken by the person in command. Paragraph 8(d) provides that such notice must be in accordance with Form 5 in the Schedule to the Regulations.

Regulation 9 - Site of accident or dangerous occurrence not to be disturbed

Regulation 9 provides that the site of an accident or of a dangerous occurrence must not be disturbed or altered except where there is a reasonable excuse or in specified circumstances unless an inspector has inspected the site or given permission for the site to be disturbed or altered.

"Reasonable excuse" is defined in subregulation 9(2) to include a number of situations where a site may be disturbed or altered without contravening subregulation 9(1). These situations include the prevention of injury or damage and actions necessary to ensure the safety of a ship.

Subregulation 9(3) specifies circumstances in which a site may be disturbed without contravening subregulation 9(1). These circumstances include where the Inspectorate has advised that inspection of the site by an inspector is not required, an inspector has not visited the site within 24 hours of notice of the accident or dangerous occurrence being given or the ship is at sea and is not proceeding to an Australian port.

Regulation 10 - Period of incapacity requiring notice and report

Paragraph 107(1)(b) of the Act provides that an operator must notify the Inspectorate if there is an accident that causes a death or serious personal injury or causes an employee to be

incapacitated for a prescribed period. Regulation 10 prescribes a period of 5 or more successive days.

Regulation 11 - Notifying accidents and dangerous occurrences

Section 107 of the Act requires an operator to give the Inspectorate notice of, and a report about, an accident or dangerous occurrence.

Regulation 11 sets out the time periods within which notice of an accident or dangerous occurrence must be given to the Inspectorate. If there is a death, notice must be given within 2 hours of the person in command becoming aware of the death. otherwise, notice must be given within 24 hours of the person in command becoming aware of the accident or dangerous occurrence.

Regulation 12 - Reporting accidents and dangerous occurrences

Regulation 12 provides that a report required by section 107 of the Act of an accident or dangerous occurrence must be given to the Inspectorate within 28 days of the operator becoming aware of the accident or dangerous occurrence. Such a report must be in accordance with Form 6 in the Schedule to the Regulations.

Regulation 13 - Manner of giving notices and reports

Regulation 13 sets out the manner in which notices and reports are to be given to the Inspectorate.

Regulation 14 - Form of notice of accidents or dangerous occurrences

Regulation 14 sets out the information required to be included in a notice of an accident or a dangerous occurrence.

Regulation 15 - Records of accidents and dangerous occurrences

Section 108 of the Act requires operators to keep records of accidents and dangerous occurrences. Regulation 15 requires those records to be kept for 5 years.

Regulation 16 - Statistical reports

Regulation 16 requires each operator to provide a report to the Authority each year setting out the average number of full-time equivalent employees for that year, and the total number of hours worked by those employees.

Schedule

The Schedule sets out the forms required by the Regulations.

ATTACHMENT

Occupational Health and Safety (Maritime Industry) Regulations

Regulation 1 Citation

Regulation 1 provides that the Regulations may be cited as the occupational Health and Safety (Maritime Industry) Regulations.

Regulation 2 - Interpretation

Subregulation 2 (1) defines the terms "Act", "business hours", "serious personal injury" and "telecommunication" for purposes of the Regulations.

Subregulation 2(2) provides that any reference in the Regulations to a form by number is a reference to the form with that number in the Schedule.

Regulation 3

Regulation 3 provides that:

- (a) directions in a form must be complied with in completing the form; and
- (b) that forms, notices and reports must be produced clearly and legibly and be completed in sufficient detail to allow proper consideration of them.

Regulation 4 - What is a dangerous occurrence?

Subsection 4(1) of the Act defines "dangerous occurrence" to be an occurrence at the workplace declared by the regulations to be a dangerous occurrence. Regulation 4 declares an occurrence to be a dangerous occurrence if it resulted from operations that occurred at the workplace and could have, but did not, result in death or serious personal injury, or could have, but did not, incapacitate an employee for 5 or more successive working days.

Regulation 5 - Involved union to authorise returning officer

Section 42 of the Act provides for the election of health and safety representatives for work groups. Regulation 5 provides that a union which is to conduct such an election must appoint a returning officer and that the election is to be held in accordance with the rules of that union.