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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1912

[Docket No. OSHA–2020-0010]

RIN 1218-AD33

Advisory Committee Regulation

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health was formed in 1995 as a discretionary committee under Section 7(b) of the Occupational Safety and Health Act of 1970 (OSH Act) to advise, consult with, and make recommendations on matters relating to the maritime industry. On December 20, 2019, the President signed the National Defense Authorization Act for Fiscal Year 2020, which establishes a Maritime Advisory Committee on Occupational Safety and Health (MACOSH) as a statutorily-mandated entity of indefinite duration. In this final rule, OSHA amends the regulation on advisory committee policies and procedures to implement this change in the authority for MACOSH.

DATES: This final rule becomes effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, OSHA Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General information and technical inquiries: Maureen Ruskin, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S.

Department of Labor, telephone (202) 693-1950; email: ruskin.maureen@dol.gov.

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I. Background

The maritime industry is a high-risk industry where activities vary from manufacturing-type work in shipyards to transportation-type work in longshoring, as well as commercial fishing operations. Historically, the maritime industry has experienced a high rate of work-related fatalities, injuries, and illnesses. MACOSH was initially formed in 1995 (60 FR 8425) as a discretionary committee authorized by Section 7(b) of the OSH Act to advise, consult with, and make recommendations to the Secretary of Labor (Secretary) on matters relating to the maritime industry. It was preceded by the

Shipyard Employment Standards Advisory Committee, which advised OSHA on shipyard issues from 1988 to 1995. The committee name was changed to reflect the broadened scope of advice that OSHA sought from the committee, which had been expanded to include all types of maritime employment.

MACOSH's advisory activities support OSHA's strategic goal of promoting safe and healthful workplaces by providing collective industry knowledge and expertise, not otherwise readily available to the Secretary, to assist in addressing the unique hazards found within the maritime sector. The committee's work has led to the development of guidance and standards to promote the reduction of injuries, illnesses, and fatalities in the maritime industry.

On December 20, 2019, the President signed the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) (NDAA), which establishes an advisory committee for the maritime industry as an entity of indefinite duration. Specifically, section 3510 of the NDAA amended section 7 of the OSH Act (29 U.S.C. 656) by adding a paragraph (d) to establish a Maritime Occupational Safety and Health Advisory Committee that is a continuing body and provides advice to the Secretary in formulating maritime industry standards and regarding matters pertaining to the administration of the OSH Act related to the maritime industry. Paragraph (d) further provides that the composition of such advisory committee must be consistent with the advisory committees established under paragraph (b) and that a member of the advisory committee who is otherwise qualified may continue to serve until a successor is appointed. It also allows the Secretary to promulgate or amend regulations as necessary to implement paragraph (d).

In order to implement the new Section 7(d) of the OSH Act, this final rule amends the text of 29 CFR part 1912 to include an advisory committee for the maritime industry of indefinite duration. The name of this committee will be Maritime Advisory Committee on Occupational Safety and Health (MACOSH). This amendment does not change the composition of the committee, which must remain consistent with other advisory committees established under section 7(b). However, it is necessary to revise 29 CFR part 1912 to describe the organization and operation of MACOSH.

This rule is not an Executive Order (EO) 13771 regulatory action because this rule is not significant under EO 12866.

II. Discussion of Changes

OSHA's regulations, 29 CFR part 1912, Advisory Committees on Standards, set forth the policies and procedures governing the composition and function of OSHA advisory committees. Pursuant to the NDAA's amendment of the OSH Act, MACOSH is now designated as a statutorily mandated advisory committee. To implement this change, this final rule amends the purpose and scope section of part 1912 by adding MACOSH to § 1912.1(a). Section 1912.1(a) will continue to state that part 1912 covers the Advisory Committee on Construction Safety and Health, as well as any advisory committees that may be appointed in the future under section 7(b) of the OSH Act.

This final rule also adds a new § 1912.13 to set forth the requirements pertaining to the composition and function of MACOSH. Paragraph (a) of this section references section 3510 of the NDAA which establishes MACOSH. In addition, paragraph (a) specifies that MACOSH shall provide advice to the Secretary in formulating maritime industry standards and regarding matters pertaining to the administration of this Act

related to the maritime industry. The Secretary may seek the advice of this committee on activities in the maritime industry related to the priorities set by the agency, including worker training, education, and assistance; setting and enforcing standards; and assurance of safe and healthful working conditions for America's working men and women in the maritime industry. While MACOSH's membership must be consistent with that of advisory committees appointed under section 7(b) of the OSH Act, paragraph (a) of § 1912.13 states that no other committee will be established to perform the same function, unless the issue or issues involved extend beyond maritime activity.

This final rule adds § 1912.13(b) to detail the organization of MACOSH. Paragraph (b) states that MACOSH is a continuing advisory body, with the makeup consistent with section 7(b) of the OSH Act. The committee membership will be composed of 15 members appointed by the Secretary, one of whom must be appointed as Chair. The composition of MACOSH is as follows:

- One member who is a designee of the Secretary of Health and Human Services (paragraph (b)(1));
- Equal representation of employers and employees, consisting of at least one member who is qualified by experience and affiliation to present the viewpoint of the employers involved, and at least one member who is similarly qualified to present the viewpoint of the employees involved (paragraph (b)(2));
- At least one representative of state health and safety agencies (paragraph (b)(3)); and
- Other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of the

committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more persons of nationally recognized standards-producing organizations.

However, the number of such persons appointed may not exceed the number of persons appointed as representatives of federal and state agencies. (Paragraph (b)(4)).

This final rule adds § 1912.13(c), which requires that the Committee's membership term will be for a period of two years. However, the Secretary has the authority to remove appointees at his or her discretion at any time. If a member resigns or is removed before his or her term expires, the Secretary may appoint a replacement to fulfill the remaining unexpired term of the resigned member.

This final rule adds § 1912.13(d) to permit members to be reappointed to successive terms. OSHA believes that returning members will provide leadership by mentoring newly appointed members on the practices and operations of the committee. In addition, membership continuity allows projects to progress across MACOSH charters. Finally, returning members will be familiar with agency priorities and previous advice provided to the Secretary.

This final rule adds § 1912.13(e) to permit members to continue serving until a successor is appointed. This provision is consistent with § 1912.3(i) that applies to the Advisory Committee on Construction Safety and Health. A member's service beyond the two-year appointment term pending the appointment of a successor will be at the Secretary's discretion.

Finally, this final rule adds § 1912.13(f) to implement the amendment to the OSH Act, under which MACOSH was designated a statutory entity of indefinite duration. Paragraph (f) also specifies that the Maritime Advisory Committee charter must be renewed every two years, in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2).

III. Legal Considerations

MACOSH is established and operates in accordance with the provisions of FACA, as amended (5 U.S.C. App. 2), the implementing regulations (41 CFR parts 101-6 and 102-3), and chapter 1-900 of Department of Labor Manual Series 3 (Aug. 31, 2020).

The Department has determined that these amendments need not be published as a proposed rule for comment under 5 U.S.C. 553(b) because the amendments comprise a rule of agency organization, procedure, or practice under 5 U.S.C. 553(b)(3)(A). Further, the final rule merely implements a statutory procedural requirement and affects no private rights or obligations, so public comment is unnecessary under 5 U.S.C. 553(b)(3)(B). Because this final rule is not substantive, and because there is no reason to delay implementation as this rule does not directly affect any private parties or require their compliance or familiarization with this rule, the Department has determined that delaying the effective date of the rule is unnecessary and good cause exists under 5 U.S.C. 553(d) to make this rule effective immediately upon publication in the *Federal Register*.

IV. Final Economic Analysis and Regulatory Flexibility Act Certification

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601--612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the

impacts of certain rules that OSHA promulgates. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is not an “economically significant regulatory action” under Executive Order 12866, or a “major rule” under the Congressional Review Act (5 U.S.C. 801 et seq.), and the impacts do not trigger the analytical requirements of UMRA. Neither the benefits nor the costs of this final rule would exceed \$100 million in any given year.

V. Office of Management and Budget Review under the Paperwork Reduction Act of 1995

The amended regulation contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and the implementing regulations at 5 CFR part 1320.

VI. Unfunded Mandates Reform Act

These rule amendments will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653, 655, and 656, Secretary’s Order 8-2020 (85 FR 58393; Sept. 18, 2020), National Defense

Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), and FACA, as amended (5 U.S.C. App. 2), the implementing regulations (41 CFR part 102–3), Department of Labor Manual Series Chapter 1-900 (August 31, 2020), and 29 CFR part 1911.

Signed at Washington, DC, on October 19, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Regulations

For the reasons stated in the preamble, OSHA amends 29 CFR part 1912 as follows:

PART 1912 – ADVISORY COMMITTEES ON STANDARDS

1. The authority citation for part 1912 is revised to read as follows:

AUTHORITY: 29 U.S.C. 653, 655, 656, 657; 5 U.S.C. 553; 5 U.S.C. App. 2; 40 U.S.C. 333; Secretary of Labor’s Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 3-2000 (65 FR 50017), or 8-2020 (85 FR 58393), as applicable.

2. Section 1912.1 is amended by revising paragraph (a) to read as follows:

§ 1912.1 Purpose and scope

(a) This part prescribes the policies and procedures governing the composition and functions of advisory committees which have been, or may be, appointed under section 7(b) of the Occupational Safety and Health Act of 1970 (the Act) to assist the Assistant Secretary in carrying out the standards-setting duties of the Secretary of Labor under section 6 of the Act. Such committees are specifically authorized by section 7(b). This part also prescribes the policies and procedures governing the composition and functions of the:

- (1) Advisory Committee on Construction Safety and Health; and
- (2) Maritime Advisory Committee on Occupational Safety and Health.

* * * * *

3. Add § 1912.13 to read as follows:

§ 1912.13 Maritime Advisory Committee on Occupational Safety and Health.

(a) This section applies to the Maritime Advisory Committee on Occupational Safety and Health, which has been established under section 3510 of the National Defense Authorization Act (Pub. L. 116-92, December 20, 2019) to advise the Secretary of Labor in formulating maritime industry standards and regarding matters pertaining to the administration of this Act related to the maritime industry. The composition of the Maritime Advisory Committee on Occupational Safety and Health is consistent with that of advisory committees which may be appointed under section 7(b) of the Act. See paragraph (c) of this section. An additional advisory committee covering these duties will not normally be established under section 7(b) of the Act, unless the issue or issues involved extend beyond maritime activity. See § 1912.4 concerning the general policy against duplication of activity by advisory committees.

(b) The Maritime Advisory Committee on Occupational Safety and Health is a continuing advisory body. It is composed of 15 members appointed by the Secretary, one of whom is appointed as Chair. The composition of the Advisory Committee is as follows:

- (1) One member who is a designee of the Secretary of Health and Human Services;
- (2) At least one member who is qualified by experience and affiliation to present the viewpoint of the employers involved, and at least one member who is similarly qualified

to present the viewpoint of the employees involved. There shall be an equal number of representatives of employers and employees involved; and

(3) At least one representative of state health and safety agencies.

(4) The Maritime Advisory Committee on Occupational Safety and Health may include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of the committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health and one or more persons of nationally recognized standards-producing organizations, but the number of persons so appointed shall not exceed the number of persons appointed as representatives of Federal and state agencies.

(c) Each member of the Maritime Advisory Committee on Occupational Safety and Health shall serve for a period of two years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

(d) Members may be appointed to successive terms.

(e) A member who is otherwise qualified may continue to serve until a successor is appointed.

(f) There shall be filed on behalf of the Maritime Advisory Committee on Occupational Safety and Health a charter in accordance with the Federal Advisory Committee Act upon the expiration of each successive two-year period.