



Health and Safety at Work (Hazardous Substances) Amendment Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 27th day of November 2017

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under sections 211, 212, 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 section 217 of that Act.

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Regulations

1 Title

These regulations are the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2017.

2 Commencement

These regulations come into force on 1 December 2017.

3 Principal regulations

These regulations amend the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the **principal regulations**).

4 Regulation 2 amended (Commencement)

In regulation 2(2), replace “4.3, 13.26, and 13.27” with “4.3(2)(b), 4.5, 10.26(4)(d), 10.34(1)(c), 10.36(1)(b), 10.37(1)(b), 12.8(5)(c), 12.18(c), 12.20(1)(c), 12.34(5)(c), 12.43(c), 12.46(1)(c), 13.26, 13.27, 13.39(c), and 19.1 (definition of **competent person**, paragraph (b))”.

5 Regulation 3 amended (Interpretation)

(1) In regulation 3(1), definition of **handle**, paragraph (b), after “the substance”, insert “into or onto”.

(2) In regulation 3(1), insert in its appropriate alphabetical order:

portable tank means a transportable container that—

- (a) is not permanently fixed to a chassis; and
- (b) can be unloaded at a destination or transferred to another transport mode; and
- (c) is referred to in chapter 6.7 of the UN Model Regulations

(3) In regulation 3(1), definition of **transportable container**, paragraph (a), replace “not fixed” with “not permanently fixed”.

6 Regulation 1.9 amended (Ethanol dilutions)

In regulation 1.9(a), replace “capacity greater than 5 L” with “capacity of 5 L or less”.

7 New regulation 1.13 inserted (Refrigeration systems containing flammable gas refrigerants)

After regulation 1.12, insert:

1.13 Refrigeration systems containing flammable gas refrigerants

(1) These regulations do not apply to domestic refrigerators, domestic heat pumps, or room air conditioners.

- (2) These regulations (other than regulations 2.5 and 2.6) do not apply to a refrigeration system to which regulation 10.10 applies if the PCBU referred to in that regulation complies with that regulation.

8 Regulation 2.5 amended (Duty of PCBU to display signage: general duty)

- (1) In regulation 2.5(1)(c), replace “flammable refrigerant” with “flammable gas refrigerant”.
- (2) After regulation 2.5(2), insert:
- (2A) This regulation applies to a hazardous substance referred to in—
- (a) regulation 2.7 (transit depots) only to the extent set out in regulation 2.7(1)(b):
 - (b) regulation 2.9 (milking animals) only to the extent set out in regulation 2.9(1)(b).

9 Regulation 2.6 amended (Signage requirements for general duty)

In regulation 2.6(6), replace “or 6.1C” with “6.1C, or 6.1D”.

10 Regulation 2.7 amended (Signage requirements for transit depots)

In regulation 2.7(1), after “control of a transit depot”, insert “to which regulation 2.5 applies and”.

11 Regulation 2.9 amended (Signage at workplace where milking animals are milked)

In regulation 2.9(1), after “workplace”, insert “to which regulation 2.5 applies and”.

12 Regulation 9.3 amended (Class 1 substances generally to be under control of certified handlers)

- (1) In regulation 9.3(5)(b), after “duties”, insert “; or”.
- (2) After regulation 9.3(5)(b), insert:
- (c) the substance is being—
 - (i) transported; or
 - (ii) loaded into or onto, or unloaded from, a vehicle or other mode of transport.

13 Regulation 10.10 amended (Requirements for refrigeration systems containing LPG, propane, butane, isobutane, or other flammable refrigerant)

- (1) In the heading to regulation 10.10, replace “LPG, propane, butane, isobutane, or other flammable refrigerant” with “flammable gas refrigerant”.
- (2) In regulation 10.10(1), replace “flammable refrigerant” with “flammable gas refrigerant” in each place.

- (3) In regulation 10.10(1)(a), delete “section 2.6 of”.
- (4) Revoke regulation 10.10(2).

14 Regulation 10.30 amended (Requirement to have secondary containment system for pooling substances)

Replace regulation 10.30(1)(a) with:

- (a) pooling substances that are class 3 or 4 substances in an aggregate quantity greater than the quantity specified in table 9 in Schedule 9 are held, or are reasonably likely to be held, at the place at any time; and

15 Regulation 10.31 amended (Requirements for surface containers of up to 60 L)

In regulation 10.31, replace “If the pooling substances held in a place within a workplace above ground are in containers” with “If pooling substances that are class 3 or 4 substances are held above ground in a place within a workplace in containers”.

16 Regulation 10.32 amended (Requirements for surface containers of more than 60 L and up to 450 L)

In regulation 10.32(1), replace “If the pooling substances held in a place within a workplace above ground are in containers” with “If pooling substances that are class 3 or 4 substances are held above ground in a place within a workplace in containers”.

17 Regulation 10.33 amended (Requirements for surface containers of more than 450 L)

- (1) In regulation 10.33(1), replace “If the pooling substances held in a place within a workplace above ground are in containers” with “If pooling substances that are class 3 or 4 substances are held above ground in a place within a workplace in containers”.
- (2) After regulation 10.33(1), insert:
 - (1A) Despite subclause (1), if the pooling substances are contained in a portable tank, the secondary containment system must have a capacity of at least 110% of the capacity of the largest portable tank at the place.

18 Regulation 11.11 amended (Duty to hold certain packages or transportable containers of class 3.1 substance in building or external storage area of certain type)

In regulation 11.11(3)(a)(iii)(A), replace “4.9.2, 4.9.5, and 4.9.7” with “4.9.2 and 4.9.5”.

19 Regulation 12.13 amended (Requirement to have secondary containment system for pooling substances)

Replace regulation 12.13(1)(a) with:

- (a) pooling substances that are class 5.1.1 substances in an aggregate quantity greater than the quantity specified in table 5 in Schedule 10 are held, or are reasonably likely to be held, at the place at any time; and

20 Regulation 12.14 amended (Requirements for surface containers of up to 60 L)

In regulation 12.14, replace “If pooling substances are held in a place above ground within a workplace” with “If pooling substances that are class 5.1.1 substances are held above ground in a place within a workplace”.

21 Regulation 12.15 amended (Requirements for surface containers of more than 60 L and up to 450 L)

In regulation 12.15(1), replace “If pooling substances are held in a place above ground within a workplace” with “If pooling substances that are class 5.1.1 substances are held above ground in a place within a workplace”.

22 Regulation 12.16 amended (Requirements for surface containers of more than 450 L)

- (1) In regulation 12.16(1), replace “If the pooling substances held in a place above ground within a workplace are in containers” with “If pooling substances that are class 5.1.1 substances are held above ground in a place within a workplace in containers”.

- (2) After regulation 12.16(1), insert:

- (1A) Despite subclause (1), if the pooling substances are contained in a portable tank, the secondary containment system must have a capacity of at least 110% of the capacity of the largest portable tank at the place.

23 Regulation 12.38 amended (Requirement to have secondary containment system for pooling substances)

Replace regulation 12.38(1)(a) with:

- (a) pooling substances that are class 5.2 substances in an aggregate quantity greater than the quantity specified in table 7 in Schedule 11 are held, or are reasonably likely to be held, at the place at any time; and

24 Regulation 12.39 amended (Requirements for surface containers of up to 60 L)

In regulation 12.39, replace “If the pooling substances held in a place above ground within a workplace are in containers” with “If pooling substances that are class 5.2 substances are held above ground in a place within a workplace in containers”.

25 Regulation 12.40 amended (Requirements for surface containers of more than 60 L and up to 450 L)

In regulation 12.40(1), replace “If the pooling substances held in a place above ground within a workplace are in containers” with “If pooling substances that are class 5.2 substances are held above ground in a place within a workplace in containers”.

26 Regulation 12.41 amended (Requirements for surface containers of more than 450 L)

(1) In regulation 12.41(1), replace “If the pooling substances held in a place above ground within a workplace are in containers” with “If pooling substances that are class 5.2 substances are held above ground in a place within a workplace in containers”.

(2) After regulation 12.41(1), insert:

(1A) Despite subclause (1), if the pooling substances are contained in a portable tank, the secondary containment system must have a capacity of at least 110% of the capacity of the largest portable tank at the place.

27 Regulation 13.12 amended (Licence required for possession of certain class 6 substances)

(1) In regulation 13.12(3), replace “who does not have a controlled substance licence” with “who does not have a controlled substance licence authorising possession of the substance”.

(2) In regulation 13.12(3)(a), replace “holds a controlled substance licence” with “holds a controlled substance licence authorising possession of the substance”.

(3) Replace regulation 13.12(3)(b) with:

(b) the transportation of the substance is treated by regulation 13.11 as having complied with regulation 13.9; or

28 Regulation 13.13 amended (Licences required for supply and acquisition of certain class 6 substances)

(1) In the heading to regulation 13.13, replace “**Licences**” with “**Licence**”.

(2) In regulation 13.13(2) and (3), after “licence”, insert “authorising possession of the substance”.

(3) Replace regulation 13.13(4) with:

(4) Despite subclause (3), a person who does not have a controlled substance licence authorising possession of the substance may acquire the substance if—

(a) the person is under the immediate supervision of a person who holds a controlled substance licence authorising possession of the substance; or

(b) the transportation of the substance is treated by regulation 13.11 as having complied with regulation 13.9; or

- (c) the person does not require a controlled substance licence as provided in regulation 7.9.

29 Regulation 13.30 amended (Requirement to have secondary containment system for pooling substances)

- (1) Replace regulation 13.30(1)(a) with:
- (a) an aggregate quantity of class 6 or 8 substances greater than the quantity specified in Schedule 16 is held, or is reasonably likely to be held, at the place at any time; and
- (2) In regulation 13.30(1)(b), replace “it is not a port” with “the place is not a port”.

30 Regulation 13.31 amended (Requirements for surface containers of up to 60 L)

- (1) In regulation 13.31(1), replace “If the pooling substances are held in a place within a workplace above ground in containers” with “If pooling substances that are class 6 or 8 substances are held above ground in a place within a workplace in containers”.
- (2) In regulation 13.31(2), replace “if pooling substances that do not have class 1 to 5 hazard classifications are held in a place above ground in containers, each of which has a capacity of 60 L or less” with “if the pooling substances do not have class 1 to 5 hazard classifications”.

31 Regulation 13.32 amended (Requirements for surface containers of more than 60 L and up to 450 L)

- (1) In regulation 13.32(1), replace “If pooling substances are held in a place within a workplace above ground in containers” with “If pooling substances that are class 6 or 8 substances are held above ground in a place within a workplace in containers”.
- (2) In regulation 13.32(2), replace “if pooling substances that do not have class 1 to 5 hazard classifications are held in a place above ground in containers 1 or more of which have a capacity of more than 60 L but none of which has a capacity of more than 450 L” with “if the pooling substances do not have class 1 to 5 hazard classifications”.

32 Regulation 13.33 amended (Requirements for surface containers of more than 450 L)

- (1) In regulation 13.33(1), replace “If the pooling substances held in a place within a workplace above ground are in containers” with “If pooling substances that are class 6 or 8 substances are held above ground in a place within a workplace in containers”.
- (2) After regulation 13.33(1), insert:

- (1A) Despite subclause (1), if the pooling substances do not have class 1 to 5 hazard classifications and—
- (a) if the place's total pooling potential is less than 20 000 L, the secondary containment system must have a capacity of the greater of—
 - (i) 25% of the total pooling potential; and
 - (ii) 110% of the capacity of the largest container:
 - (b) if the place's total pooling potential is 20 000 L or more, the secondary containment system must have a capacity of the greater of—
 - (i) 5% of the total pooling potential; and
 - (ii) 5 000 L.
- (1B) Despite subclause (1), if the pooling substances are contained in a portable tank, the secondary containment system must have a capacity of at least 110% of the capacity of the largest portable tank at the place.

33 Regulation 13.39 amended (Matters to be certified for hazardous substance location where class 6 or 8 substances are present)

Replace regulation 13.39(f) with:

- (f) the segregation requirements in regulation 13.29 are complied with; and
- (fa) a site plan is available for inspection, as required by regulation 13.34(5)(b); and

34 Regulation 14.26 amended (Measures required to restrict fumigant emission from treated soil)

In regulation 14.26(2)(a), replace “Tri-Form 60” with “the fumigant”.

35 Regulation 15.1 amended (Interpretation)

In regulation 15.1, definition of **test station**, delete “to inspect and test gas cylinders and issue test reports”.

36 Regulation 15.6 amended (Application of subpart 2)

- (1) In regulation 15.6(1), replace “This subpart” with “Subject to subclauses (2) and (3), this subpart”.
- (2) After regulation 15.6(2), insert:
- (3) This subpart (other than regulations 15.11, 15.14, and 15.16) does not apply to low-pressure fire extinguishers.

37 Regulation 15.10 amended (Design standards for cylinder neck threads)

In regulation 15.10(1), delete “, other than a low-pressure fire extinguisher,”.

38 Regulation 15.21 amended (Application of subpart 3)

In regulation 15.21, after “subpart”, insert “, in addition to regulations 15.11, 15.14, and 15.16.”.

39 Regulation 15.29 amended (Outlet connection for cylinder valves)

In regulation 15.29(2)(a)(iv), replace “RH” with “LH”.

40 Regulation 15.52 amended (Authorisation of test stations)

- (1) In regulation 15.52(1), replace “and to issue test reports, in accordance with regulations 15.56 and 15.59(2),” with “, to issue test reports, and to carry out associated functions under this subpart”.
- (2) In regulation 15.52(1)(b), after “tests”, insert “of cylinders”.

41 Regulation 15.56 amended (Periodic tests)

In regulation 15.56(2), replace “if the cylinder passes” with “if the test report for the cylinder states that the cylinder has passed”.

42 Regulation 16.30 amended (Requirements for UN approved containers)

After regulation 16.30(4), insert:

- (4A) For the purposes of this regulation, WorkSafe may perform all the functions and exercise all the powers that a competent authority (within the meaning of the UN Model Regulations) may perform and exercise under chapters 6.5 and 6.7 of those regulations.

43 Regulation 16.36 amended (Requirements for issue and renewal of in-service compliance certificates)

In regulation 16.36(4), replace “comply with Schedule 24” with “comply with the applicable requirements of Schedule 24”.

44 Regulation 17.2 amended (Interpretation)

In regulation 17.2, insert in its appropriate alphabetical order:

API STD 650 means the API Standard on Welded tanks for oil storage, Twelfth Edition, Includes Errata 1 (2013), Errata 2 (2014), Addendum 1 (2014), and Addendum 2 (2016)

45 Regulation 17.6 amended (Design, construction, and installation of above ground stationary tanks for hazardous liquids)

Before regulation 17.6(1)(a), insert:

(aa) API STD 650:

46 Regulation 17.64 amended (Service tank in stationary container system)

In regulation 17.64(2), replace “all stationary container systems in the building” with “the system”.

47 Regulation 17.80 amended (Records for stationary container systems)

- (1) In regulation 17.80(1), replace paragraph (a) with:
- (a) if any separation distance required by these regulations extends to within 5 m of the legal boundary of the workplace, the location of that legal boundary; and
- (2) In regulation 17.80(1), in paragraph (c), replace “place” with “workplace”.

48 New regulation 17.81A inserted (Inspection and testing of above ground stationary tank)

Before regulation 17.82, insert:

17.81A Inspection and testing of above ground stationary tank

- (1) Without limiting regulation 17.4, a relevant PCBU must ensure that, if an inspection or testing is required to be undertaken in relation to the repair, alteration, or maintenance of an above ground stationary tank, the person undertaking the inspection or testing is able to demonstrate appropriate experience.
- (2) A PCBU who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000.

49 Regulation 17.82 amended (Above ground stationary tank for storing hazardous liquids)

Revoke regulation 17.82(2).

50 Regulation 17.92 amended (Validity of compliance certificate for stationary container system)

After regulation 17.92(1)(c), insert:

- (ca) a period specified in a relevant safe work instrument; or

51 Regulation 18.9 amended (Handling, packaging, and storage of approved hazardous substances)

After regulation 18.9(2)(a), insert:

- (ab) handled or possessed by, or supplied to, an individual who holds a controlled substance licence; or

52 Regulation 18.10 amended (Handling, packaging, and storage of unapproved hazardous substances)

- (1) In regulation 18.10(2), replace “the approved hazardous substance” with “a substance”.
- (2) After regulation 18.10(2)(a), insert:

(ab) handled or possessed by, or supplied to, an individual who holds a controlled substance licence; or

53 Regulation 18.12 amended (Laboratory manager)

After regulation 18.12(3), insert:

(3A) For the purposes of regulation 9.8(1) and 13.13(2) and (3), a laboratory manager who supplies or acquires a substance must be treated as an individual who holds a controlled substance licence that authorises possession of the substance.

54 Schedule 1 amended

Amend Schedule 1 as set out in the Schedule of these regulations.

55 Schedule 13 amended

- (1) In Schedule 13, item 9, replace “Ferafeed Paste” with “Feratox pellets in Ferafeed paste”.
- (2) In Schedule 13, after item 9, insert:

10 MZP Paste containing 15 g/kg zinc phosphide, HSNO approval number HSR100557
11 PAPP Ready-to-use Bait, HSNO approval number HSR100496

56 Schedule 26 amended

In Schedule 26, table 2, after item 5, insert:

5A PAPP Ready-to-use Bait, HSNO approval number HSR100496
5B PLC-2, a liquid concentrate containing 34 g/litre of pindone present as sodium salt, HSNO approval number HSR101184
5C Feratox pellets in Ferafeed paste, HSNO approval number HSR100752

Schedule Amendments to Schedule 1 of principal regulations

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Clause 1

In clause 1, definition of **2004 Transfer Notice**, replace “as that section was in force before 2 July 2006” with “as amended and in force on 30 June 2006”.

In clause 1, insert in its appropriate alphabetical order:

2006 Transfer Notice means the Hazardous Substances (Chemicals) Transfer Notice 2006 issued by the Environmental Risk Management Authority under section 160A of the HSNO Act as in force on 28 June 2006

New clauses 33A to 33F

After clause 33, insert:

New clauses 33A to 33F—continued**33A Previous compliance plans for tank wagons**

- (1) An approval of a compliance plan for a tank wagon given by the EPA under clause 18 of Schedule 11 of the 2004 Transfer Notice and in force immediately before the commencement date continues in force on and after that date for the purposes of this clause.
- (2) A PCBU with management or control of a tank wagon for which a compliance plan has been continued must, in relation to that tank wagon, comply with—
 - (a) Part 16; or
 - (b) the following:
 - (i) regulations 16.4(2), 16.5(1) and (3), 16.15, and 16.36 to 16.45; and
 - (ii) the compliance plan.
- (3) If there is any inconsistency between a requirement under a provision referred to in subclause (2)(b)(i) and a requirement in the compliance plan referred to in subclause (2)(b)(ii), the requirement under the provision referred to in subclause (2)(b)(i) prevails.
- (4) A PCBU who contravenes a provision of a compliance plan continued under subclause (1) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

33B Existing loader-refuellers

- (1) A PCBU with management or control of an existing loader-refueller must, in relation to that loader-refueller, comply with—
 - (a) Part 16; or
 - (b) a compliance plan approved under clause 33D.
- (2) A PCBU who contravenes this clause commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.
- (3) In this clause,—

existing loader-refueller means a loader-refueller that did not comply with the HSNO Act immediately before the commencement date
- (4) In this clause and clauses 33C and 33D,—

loader-refueller means a tank wagon that is designed and used as—

 - (a) a fertiliser loader; and
 - (b) an aircraft refueller.

New clauses 33A to 33F—continued**33C Loader-refuellers: preparation of compliance plans**

- (1) For the purposes of clause 33B, a PCBU with management or control of a loader-refueller must engage a compliance certifier to assess and report on the extent to which the loader-refueller complies with Part 16.
- (2) If the compliance certifier determines that the loader-refueller does not comply with Part 16, the PCBU must give WorkSafe a compliance plan setting out—
 - (a) the compliance certifier's view, based on the information available to the compliance certifier, of the extent to which the loader-refueller has been maintained and repaired to conform to the standard to which it was constructed; and
 - (b) how, and the time within which, the loader-refueller will be altered so that it complies with—
 - (i) Part 16; or
 - (ii) the standard to which it was constructed; or
 - (iii) variations to the requirements of Part 16.
- (3) The compliance plan must—
 - (a) be in the form required by WorkSafe (if any); and
 - (b) be accompanied by the fee (if any) prescribed in Schedule 2.

33D Loader-refuellers: approval of compliance plans

- (1) WorkSafe must, as soon as practicable after receiving a compliance plan under clause 33C,—
 - (a) approve the plan; or
 - (b) decline to approve the plan.
- (2) If WorkSafe declines to approve a compliance plan,—
 - (a) WorkSafe must advise the PCBU who gave the plan to WorkSafe of the reasons for declining to approve it; and
 - (b) WorkSafe and that PCBU must attempt to agree on amendments to the plan that WorkSafe considers will allow it to approve the compliance plan.
- (3) If WorkSafe and the PCBU agree on amendments to the compliance plan within 20 working days after the date on which WorkSafe advises its reasons for declining to approve the plan, or any further period that WorkSafe allows, WorkSafe must approve the plan with those amendments.
- (4) WorkSafe and the PCBU may from time to time agree on amendments to a compliance plan that has been approved under subclause (1)(a).

New clauses 33A to 33F—continued**33E In-service compliance certificates for tank wagons with compliance plans**

- (1) This clause applies to a tank wagon—
 - (a) for which a compliance plan is continued under clause 33A; or
 - (b) that is a loader-refueller for which a compliance plan is approved under clause 33D.
- (2) Regulation 16.36 applies to the tank wagon—
 - (a) as if regulation 16.36(1) were replaced by subclause (3) of this clause; and
 - (b) as if regulation 16.36(4) were replaced by subclause (4) of this clause.
- (3) For the purposes of the application of regulation 16.36, a PCBU with management or control of a tank wagon must obtain an in-service compliance certificate for the tank wagon not more than 2 years after the later of the following:
 - (a) the date of the compliance plan;
 - (b) the date of the most recent in-service test certificate that is treated as an in-service compliance certificate under clause 33.
- (4) An in-service compliance certificate may be issued by a compliance certifier if the compliance certifier is satisfied that the tank wagon and tank comply with those requirements of Schedule 24 that apply under the compliance plan.
- (5) A PCBU who contravenes this clause commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

33F Additional in-service compliance certificates

- (1) This clause applies if a component of a tank wagon that requires an in-service compliance certificate under clause 33E is repaired, altered, or subject to an accident and, as a result, that component may no longer comply with—
 - (a) a requirement of the compliance plan; or
 - (b) a requirement of Schedule 24 that is consistent with the compliance plan.
- (2) A PCBU with management or control of a tank wagon must ensure that the tank wagon is not used until compliance certificates are obtained in accordance with clause 33E.
- (3) A PCBU who contravenes this clause commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

New clause 40A

After clause 40, insert:

40A Design and manufacture of stationary container system

- (1) This regulation applies to a stationary container system that—
 - (a) complied with the design and manufacture requirements of the 2004 Transfer Notice and the 2006 Transfer Notice immediately before the commencement date; and
 - (b) continues to comply with those requirements.
- (2) The stationary container system must be treated, on and after the commencement date, as complying with the design and manufacture requirements of regulation 17.6.

Clause 42

In clause 42(1), delete “is not required to comply with Part 17, but”.

In clause 42(3), replace “this clause” with “a compliance plan”.

Clause 43

In clause 43(2)(b)(iii), delete “, which may be treated as compliance with those sub-parts”.

New clause 44A

After clause 44, insert:

44A Existing requests for approval of compliance plans

- (1) This clause applies to a request for an approval of a compliance plan under clause 102 of Schedule 8 of the 2004 Transfer Notice 2004 that, immediately before the commencement date,—
 - (a) has been made in accordance with the HSNO Act; and
 - (b) has been received by the EPA; but
 - (c) has not been determined by the EPA.
- (2) The request must be treated, on and after the commencement date, as a request for approval under clause 44 of a compliance plan that complies with clause 43(3).
- (3) Subject to subclauses (4) and (5), WorkSafe must determine an application in accordance with these regulations.
- (4) WorkSafe may require the applicant to give WorkSafe, within a specified reasonable time, any additional information that WorkSafe considers necessary to determine the application in accordance with these regulations.
- (5) WorkSafe may refuse to approve a compliance plan if the applicant does not comply with a requirement under subclause (4).

Clause 50

In clause 50(3), definition of **existing stationary tank or process container**, replace “1 April 2004” with “1 July 2006” in each place.

New clause 51

After clause 50, insert:

51 Existing applications for approvals, certificates, and other matters

- (1) This clause applies to applications for approvals, certificates, and other matters under the HSNO Act that, immediately before the commencement date,—
 - (a) have been made in accordance with the HSNO Act; and
 - (b) have been received, but not determined, by the EPA or a test certifier or other relevant decision-maker.
- (2) An application of a type referred to in column 2 of the table must be treated, on and after the commencement date, as an application of the corresponding type referred to in column 3 of the table.
- (3) For the purposes of subclause (2), the application must be treated as complying with any requirements of these regulations in relation to form and application fee.
- (4) For the purposes of item 3 of the table (application for renewal of approval as test certifier), regulation 6.14(5) applies only if the application for renewal of approval as a test certifier is made at least 20 days before the date on which the approval ends (*see* regulation 6.14(2)(a)).
- (5) Subject to subclauses (6) and (7), WorkSafe or a relevant compliance certifier (the **decision-maker**) must determine an application in accordance with these regulations.
- (6) The decision-maker may require the applicant to give to the decision-maker, within a specified reasonable time, any additional information that the decision-maker considers necessary to determine the application in accordance with these regulations.
- (7) The decision-maker may refuse to give or issue the approval, certificate, or other matter applied for if the applicant does not comply with a requirement under subclause (6).

HSNO applications continued as applications under these Regulations

Column 1	Column 2	Column 3
1	Application under section 83 of HSNO Act for approval as test certifier	Application under regulation 6.5 for authorisation as compliance certifier
2	Application under section 83 of HSNO Act for variation of approval as test certifier	Application under regulation 6.13 for variation of authorisation as compliance certifier

New clause 51—*continued*

Column 1	Column 2	Column 3
3	Application under section 83 of HSNO Act for renewal or continuation of approval as test certifier	Application under regulation 6.14 for renewal of authorisation as compliance certifier
4	Request under regulation 7 of Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 for longer time limit for which test certificate (for hazardous substance location) is valid	Application under regulation 8.2 for extension of period after which compliance certificate for hazardous substance location must be renewed
5	Request for determination under clause 93(1)(b) of Schedule 8 of 2004 Transfer Notice of validity period for test certificate for stationary container system	Application under regulation 17.92(5) to increase validity period of compliance certificate for stationary container system
6	Application under section 95B of HSNO Act for a licence to possess a hazardous substance	Application, under regulation 7.1, for controlled substance licence
7	Application under clause 33 of Schedule 10 of 2004 Transfer Notice to reduce separation distance or vary other matters required by Part 2 or 3 of that schedule	Application under regulation 11.40 for exemption under section 220 of the Act from separation distance requirement or any other matters in subpart 1 or 2 of Part 11 of these regulations
8	Application under regulation 15 of Hazardous Substances (Compressed Gases) Regulations 2004 for design verification certificate for cylinder	Application under regulation 15.13 for design verification certificate for cylinder
9	Application under regulation 19 of Hazardous Substances (Compressed Gases) Regulations 2004 for test certificate for imported cylinder or batch of imported cylinders	Application under regulation 15.16 for compliance certificate for imported cylinder or batch of imported cylinders
10	Application under regulation 21 of Hazardous Substances (Compressed Gases) Regulations 2004 for waiver of requirement for pre-commissioning certificate for cylinder design	Application under regulation 15.18 for exemption, under section 220 of the Act, from requirement for pre-commissioning certificate for cylinder design
11	Application under regulation 22 of Hazardous Substances (Compressed Gases) Regulations 2004 for pre-commissioning certificate for cylinder design	Application under regulation 15.19 for pre-commissioning certificate for cylinder design
12	Application under regulation 36 of Hazardous Substances (Compressed Gases) Regulations 2004 for test certificate for imported or manufactured fittings for LPG cylinders	Application under regulation 15.37 for compliance certificate for imported or manufactured fittings for LPG cylinders
13	Application for waiver under regulation 38 of Hazardous Substances (Compressed Gases)	Application under regulation 15.39 for exemption under section 220 of the Act from requirement for compliance

New clause 51—*continued*

Column 1	Column 2	Column 3
	Regulations 2004 of requirement for test certificate for imported or manufactured fittings for LPG cylinders	certificate for imported or manufactured fittings for LPG cylinders
14	Application under regulation 32 of Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 for design test certificate for tank wagon or part of tank wagon	Application under regulation 16.31 for design compliance certificate for tank wagon or part of tank wagon
15	Application under regulation 35(1) of Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 for pre-commissioning test certificate for tank wagon	Application under regulation 16.34 for pre-commissioning compliance certificate for tank wagon
16	Application under regulation 35(4) of Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 for approval as approved fabricator for tank wagon	Application under regulation 16.35 for approval as approved fabricator for tank wagon
17	Application for variation under subregulation (7) of regulation 42 of Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 as modified by Environmental Risk Management Authority Decision HRE09001 made on 2 September 2010 under section 63A of HSNO Act of requirements relating to firefighting capability for road tank wagons	Application under regulation 16.44 for exemption, under section 220 of the Act, from requirements relating to fire-fighting facilities and equipment for tank wagons
18	Application for approval under clause 40(2)(b)(i) of Schedule 8 of 2004 Transfer Notice of action as ensuring disused below ground stationary tank and pipes are not a hazard	Application under regulation 17.39 for approval of manner of ensuring disused below ground stationary tank and pipes are not a hazard
19	Application under clause 42 of Schedule 8 of 2004 Transfer Notice of variation of requirements relating to fire fighting facilities for above ground stationary tanks	Application under regulation 17.41 for exemption under section 220 of the Act from requirements relating to fire-fighting facilities and equipment for above ground stationary tanks
20	Application for approval of type or kind of dispenser under clause 49 of Schedule 8 of 2004 Transfer Notice	Application for approval of type of dispenser under regulation 17.48
21	Application for approval of type or kind of vaporiser under clause 53 of Schedule 8 of 2004 Transfer Notice	Application for approval of type of vapouriser under regulation 17.53

New clause 51—*continued*

Column 1	Column 2	Column 3
22	Application for approval of type or kind of burner under clause 68 of Schedule 8 of 2004 Transfer Notice	Application for approval of type of burner under regulation 17.67
23	Application for approval under clause 3 of Schedule 9 of 2004 Transfer Notice of reduction of capacity of secondary containment system required by regulation 39 of Hazardous Substances (Emergency Management) Regulations 2001	Application under regulation 17.100 for approval of reduction of required capacity of secondary containment system
24	Application for approval under clause 2A of Schedule 9 of 2004 Transfer Notice of increase of maximum aggregate capacity of all stationary containers in a secondary containment system	Application for approval under regulation 17.103 of increase of maximum total capacity of 1 or all stationary containers in a secondary containment system
25	Application for approval under clause 2 of Schedule 9 of 2004 Transfer Notice of increase of maximum aggregate capacity of group of stationary containers in intermediate secondary containment system	Application for approval under regulation 17.104 of increase of maximum aggregate capacity of a group of stationary containers in intermediate secondary containment system

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 December 2017, make corrections and other minor amendments to the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the **principal regulations**).

Regulation 1 gives the Title of these regulations as the Health and Safety at Work (Hazardous Substances) Amendment Regulation 2017.

Regulation 2 provides that these regulations commence on 1 December 2017, which is when the majority of provisions of the principal regulations commence.

Regulation 3 identifies the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the **principal regulations**) as the regulations being amended by these regulations.

Regulation 4 amends regulation 2(2) (regulations that are to commence on 1 June 2018) by replacing an incorrect reference to regulation 4.3 with the intended reference to regulation 4.5, and by consequentially adding references to several specific provisions in the principal regulations that refer to regulation 4.5.

Regulation 5 makes consequential amendments to regulation 3 (interpretation) to support amendments made by other provisions. In particular, *regulation 5*—

- amends the definitions of handle and transportable container:
- inserts a new definition of portable tank.

Regulation 6 amends regulation 1.9(a) by correcting a reference to the capacity of the relevant substance. The effect of the amendment is that the regulations will not apply to the relevant substance when stored in specified small quantities (rather than large quantities).

Regulation 7 inserts *new regulation 1.13* (refrigeration systems containing flammable gas refrigerants) to clarify the extent to which the principal regulations apply to refrigerators (and similar appliances) and refrigeration systems. This was previously unclear.

Regulation 8 amends regulation 2.5 (duty of PCBU to display signage: general duty) by clarifying the extent to which signage requirements apply to transit depots and premises used for milking animals. This clause also makes the reference to refrigerant substances consistent with other references in the principal regulations.

Regulation 9 amends regulation 2.6 (signage requirements for general duty) by correcting an incorrect cross-reference. The effect is to expand the circumstances in which certain signage requirements do not apply.

Regulation 10 amends regulation 2.7 (signage requirements for transit depots) to clarify the relationship between regulations 2.7 and 2.5.

Regulation 11 amends regulation 2.9 (signage at workplace where milking animals are milked) to clarify the relationship between regulations 2.9 and 2.5.

Regulation 12 amends regulation 9.3 (class 1 substances generally to be under control of certified handlers) by adding *new regulation 9.3(5)(c)*. The effect is that the relevant substances are not required to be under the personal control of a certified handler when being transported or when being loaded onto or unloaded from a transport vehicle. This is consistent with the limited role the principal regulations have in regulating the transport of hazardous substances (*see* regulation 1.6).

Regulation 13 amends regulation 10.10 (requirements for refrigeration systems containing LPG, propane, butane, isobutane, or other flammable refrigerant) by—

- correcting a reference to the applicable AS/NZS standard:
- making minor consequential amendments that support *new regulation 1.13*.

Regulation 14 amends regulation 10.30 (requirement to have secondary containment system for pooling substances) by replacing regulation 10.30(1)(a). *New regulation 10.30(1)(a)* makes clear that the class 3 or 4 substances that regulation 10.30 is concerned with are pooling substances. Related amendments are made to regulations 10.31 to 10.33 for different size containers, and a similar series of amendments is made to regulations 12.13 to 12.16, 12.38 to 12.41, and 13.30 to 13.33.

Regulation 15 amends regulation 10.31 (requirements for surface containers of up to 60 L) by making clear that the pooling substances referred to are of class 3 or 4.

Regulation 16 amends regulation 10.32 (requirements for surface containers of more than 60 L and up to 450 L) by making clear that the pooling substances referred to are of class 3 or 4.

Regulation 17 amends regulation 10.33 (requirements for surface containers of more than 450 L) by making clear that the pooling substances referred to are of class 3 or 4. In addition, *new regulation 10.33(1A)* is inserted, providing for the capacity of the secondary containment system where the pooling substances are in a portable tank.

Regulation 18 amends regulation 11.11 (duty to hold certain packages or transportable containers of class 3.1 substance in building or external storage area of certain type). The amendment to regulation 11.11(3)(a)(iii)(A) removes the reference to a provision of the relevant AS standard that must be complied with to avoid the storage requirements of regulation 11.11(1), but that is no longer applicable.

Regulation 19 amends regulation 12.13 (requirement to have secondary containment system for pooling substances) by replacing regulation 12.13(1)(a). The new paragraph makes clear that the class 5.1.1 substance that regulation 12.13 is concerned with are pooling substances.

Regulation 20 amends regulation 12.14 (requirements for surface containers of up to 60 L) by making clear that the pooling substances referred to are of class 5.1.1.

Regulation 21 amends regulation 12.15 (requirements for surface containers of more than 60 L and up to 450 L) by making clear that the pooling substances referred to are of class 5.1.1.

Regulation 22 amends regulation 12.16 (requirements for surface containers of more than 450 L) by making clear that the pooling substances referred to are of class 5.1.1. In addition, *new regulation 12.16(1A)* is inserted, providing for the capacity of the secondary containment system where the pooling substances are in a portable tank.

Regulation 23 amends regulation 12.38 (requirement to have secondary containment system for pooling substances) by replacing regulation 12.38(1)(a). The new paragraph makes clear that the class 5.2 substances that regulation 12.38 is concerned with are pooling substances.

Regulation 24 amends regulation 12.39 (requirements for surface containers of up to 60 L) by making clear that the pooling substances referred to are of class 5.2.

Regulation 25 amends regulation 12.40 (requirements for surface containers of more than 60 L and up to 450 L) by making clear that the pooling substances referred to are of class 5.2.

Regulation 26 amends regulation 12.41 (requirements for surface containers of more than 450 L) by making clear that the pooling substances referred to are of class 5.2. In addition, *new regulation 12.41(1A)* is inserted, providing for the capacity of the secondary containment system where the pooling substances are in a portable tank.

Regulation 27 amends regulation 13.12 (licence required for possession of certain class 6 substances) as follows:

- *subclauses (1) and (2)* clarify references to the controlled substance licence that is required under regulation 13.12(3) by specifying the type of controlled substance licence:
- *subclause (3)* corrects the language in regulation 13.12(3)(b) that is used to refer to regulations 13.9 and 13.11.

Regulation 28 amends regulation 13.13 (licences required for supply and acquisition of certain class 6 substances) as follows:

- *subclause (1)* amends the heading for consistency with similar headings:
- *subclause (2)* clarifies the reference to the controlled substance licence that is required under regulation 13.13(3) by specifying the type of controlled substance licence:
- *subclause (3)* inserts *new regulation 13.13(4)*, which provides alternative controls that remove the requirement for the substances to be under the control of the holder of a controlled substance licence.

Regulation 29 amends regulation 13.30 (requirement to have secondary containment system for pooling substances) by replacing regulation 13.30(1)(a). The new paragraph makes clear that the class 6 or 8 substances that regulation 13.30 is concerned with are pooling substances.

Regulation 30 amends regulation 13.31 (requirements for surface containers of up to 60 L) by making clear that the pooling substances referred to are of class 6 or 8.

Regulation 31 amends regulation 13.32 (requirements for surface containers of more than 60 L and up to 450 L) by making clear that the pooling substances referred to are of class 6 or 8.

Regulation 32 amends regulation 13.33 (requirements for surface containers of more than 450 L) by making clear that the pooling substances referred to are of class 6 or 8. In addition, *new regulation 13.33(1A) and (1B)* is inserted: *new subclause (1A)* replicates regulation 13.31(2) and 13.32(2) by lowering the required capacity of secondary containment where the pooling substances have lesser hazard classifications; *new subclause (1B)* provides for the capacity of the secondary containment system where the pooling substances are in a portable tank.

Regulation 33 amends regulation 13.39 (matters to be certified for hazardous substance location where class 6 or 8 substances are present) by replacing paragraph (f) with *new paragraphs (f) and (fa)*, which more clearly and fully set out the content of current paragraph (f).

Regulation 34 amends regulation 14.26 (measures required to restrict fumigant emission from treated soil). The reference in regulation 14.26(2)(a) to the specific fumigant Tri-Form 60 is replaced with “the fumigant” for consistency with regulation 14.26(1).

Regulation 35 amends the definition of test station in regulation 15.1 (interpretation). This is a minor, simplifying alteration, to support the amendments to regulations 15.52 and 15.56.

Regulation 36 amends regulation 15.6 (application of subpart 2). *New regulation 15.6(3)* is inserted, and regulation 15.6(1) is consequentially amended, to clarify the extent to which subpart 2 of Part 15 applies to low-pressure fire extinguishers.

Regulation 37 amends regulation 15.10 (design standards for cylinder neck threads) by removing the reference to low-pressure fire extinguishers, in support of the amendment to regulation 15.6.

Regulation 38 amends regulation 15.21 (application of subpart 3). Subpart 3 of Part 15 applies to low-pressure fire extinguishers, and this amendment signals that certain provisions of subpart 2 also apply.

Regulation 39 amends regulation 15.29 (outlet connection for cylinder valves) by correcting an incorrect reference to a standard with which LPG cylinder valve outlets must comply.

Regulation 40 amends regulation 15.52 (authorisation of test stations) to correct and simplify the reference to the functions of test stations.

Regulation 41 amends regulation 15.56 (periodic tests) by correcting the language used to describe a cylinder that has passed a periodic test.

Regulation 42 amends regulation 16.30 (requirements for UN approved containers) by inserting *new regulation 16.30(4A)*, which makes clear that WorkSafe can perform the functions of a competent authority under the UN Model Regulations incorporated by reference into regulation 16.30. This is necessary because the UN Model Regulations do not merely impose duties: they involve regulator activity in order to be effective.

Regulation 43 amends regulation 16.36 (requirements for issue and renewal of in-service compliance certificates) by replacing a reference to complying with Schedule 24 generally with a reference to complying with applicable requirements of Schedule 24. Not all of Schedule 24 is applicable in this situation. The amendment aligns regulation 16.36(4) with regulation 16.36(3).

Regulation 44 amends regulation 17.2 (interpretation) by inserting a new definition of a compliance standard to support the amendment of regulation 17.6.

Regulation 45 amends regulation 17.6 (design, construction, and installation of above ground stationary tanks for hazardous liquids) by adding a new standard to regulation 17.6(1) that must be complied with.

Regulation 46 amends regulation 17.64 (service tank in stationary container system) by correcting an incorrect reference in regulation 17.64(2) to the stationary container system described in regulation 17.64(1).

Regulation 47 amends regulation 17.80 (records for stationary container systems) by replacing regulation 17.80(1)(a) to correct an incorrect description of what separation distances must be included in the site plan. This clause also amends regulation

17.80(1)(c) by replacing an incorrect reference to “place” with a reference to “workplace”.

Regulation 48 inserts *new regulation 17.81A*, which is in effect the relocation of current regulation 17.82(2) (which is revoked by *regulation 49*). This requirement was incorrectly located in regulation 17.82.

Regulation 49 revokes regulation 17.82(2), in support of the amendment made by *regulation 48*.

Regulation 50 amends regulation 17.92 (validity of compliance certificate for stationary container system) by providing for the option of a safe work instrument specifying the period of validity of a compliance certificate.

Regulation 51 amends regulation 18.9 (handling, packaging, and storage of approved hazardous substances) by adding a further exception to the requirements in regulation 18.9(1). *New regulation 18.9(2)(ab)* allows a PCBU to use the holder of a controlled substance licence to handle (etc) the relevant substances.

Regulation 52 amends regulation 18.10 (handling, packaging, and storage of unapproved hazardous substances) by adding a further exception to the requirements in regulation 18.10(1). *New regulation 18.10(2)(ab)* allows a PCBU to use the holder of a controlled substance licence to handle or supply, etc, the relevant substances. In addition, a minor correction is made to regulation 18.10(1).

Regulation 53 amends regulation 18.12 (laboratory manager). *New regulation 18.12(3A)* allows a laboratory manager to supply or acquire certain substances by treating that manager as the holder of a controlled substance licence.

Regulation 54 makes a number of amendments to Schedule 1 (transitional, savings, and related provisions). The amendments are set out in the Schedule of these regulations.

Regulation 55 amends Schedule 13 (class 6.1 substances that require controlled substance licence) by—

- amending item 9 by replacing the reference to “Ferafeed Paste” with a more complete and accurate reference to “Feratox pellets in Ferafeed paste”;
- inserting *new items 10 and 11*, which describe 2 new substances that require handling only by the holder of a controlled substance licence.

Regulation 56 amends Schedule 26 (tracking of hazardous substances) by adding 3 new substances (in *new items 5A, 5B, and 5C*) to table 2 (other hazardous substances that require tracking).

The *Schedule* (see *regulation 54*) contains amendments to Schedule 1 (transitional, savings, and related provisions) as follows:

- clause 1 (interpretation) is amended by—
 - amending the definition of 2004 Transfer Notice to make clear that the definition contemplates amendments to that notice made up to 30 June 2006:

- inserting a new definition of 2006 Transfer Notice in support of *new clause 40A* of Schedule 1.
- *new clauses 33A to 33F* are inserted into Schedule 1. The new clauses provide as follows:
 - *new clause 33A* provides for compliance plans for tank wagons that were in force immediately before the commencement date. Those compliance plans continue in force on and after that date and, along with certain provisions of Part 16 of the principal regulations, form a compliance option for the relevant duty holder:
 - *new clauses 33B to 33F* provide for the development of new compliance plans for post-commencement use of tank wagons designed and used as fertiliser loaders and aircraft refuellers (**loader-refuellers**). These provisions replicate existing clauses 42 to 44 of Schedule 1, which apply to existing stationary container systems, and provide as follows:
 - *new clause 33B* requires the relevant PCBU to comply, in relation to an existing loader-refueller, with either Part 16 or a compliance plan approved under *new clause 33D*:
 - *new clause 33C* provides how the PCBU must develop a compliance plan and give it to WorkSafe:
 - *new clause 33D* provides for WorkSafe's approval of the compliance plan:
 - *new clauses 33E and 33F* make further provision for tank wagons to which either *new clause 33A* or *new clauses 33B to 33D* apply as follows:
 - *new clause 33E* sets out the way in which regulation 16.36 (requirements for issue and renewal of in-service compliance certificates) applies to those tank wagons:
 - *new clause 33F* provides for an additional in-service compliance certificate where, after repair, alteration, or accident, the tank wagon no longer complies with the compliance plan or *new clause 33E*.
- *new clause 40A* is inserted, which provides that an existing stationary container system that complied with design and manufacture requirements immediately before the commencement date, and that continues to be compliant, must be treated as still being compliant on and after commencement.
- minor amendments are made to clause 42 (existing stationary container systems) for the purpose of clarification.
- clause 43 (existing stationary container systems: preparation of compliance plans) is amended to simplify the process of preparing a compliance plan.
- *new clause 44A* (existing requests for approval of compliance plans) is inserted, which continues pre-commencement requests for approval of compliance

plans as requests for approval under clause 44. This continuation occurs if the requests for compliance plans were made in accordance with the Hazardous Substances and New Organisms Act 1996 (HSNO) and were received but not determined by the Environmental Protection Authority (EPA) before the commencement date. WorkSafe must determine the application under the principal regulations, may ask the applicant for additional information, and may refuse to approve the plan if the information is not given.

- clause 50 (approved compliance plans for existing secondary containment systems) is amended by changing a date in the definition of existing stationary tank or process container in clause 50(3). The effect of the change of date is to make the pre-commencement compliance referred to more recent, and of a higher level, so that treating the system as compliant on and after commencement is appropriate.
- *new clause 51* (existing applications for approvals, certificates, and other matters) is inserted, which provides for the continuation of a number of pre-commencement applications as corresponding applications under the principal regulations, as follows:
 - the pre-commencement applications and the corresponding post-commencement applications are set out in the table in *new clause 51*:
 - pre-commencement applications must be treated as corresponding applications under the principal regulations if, before the commencement date, they—
 - have been made in accordance with the HSNO Act; and
 - have been received but not determined by the EPA or other decision-maker:
 - the decision-maker must determine the relevant application under the principal regulations, may ask the applicant for additional information, and may refuse to give or issue the approval, certificate, or other matter if the information is not given.

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