

# Public consultation

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*HAZARDOUS SUBSTANCES  
SAFE WORK INSTRUMENTS*

October 2017



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## Purpose

This document seeks public comment on proposed hazardous substances safe work instruments (SWIs).

Your submissions will help WorkSafe determine whether the proposed SWIs will enable those operating in accordance with existing requirements imposed under the Hazardous Substances and New Organisms Act 1996 (the HSNO regime) to be compliant under the Health and Safety at Work Act 2015 (the HSWA regime).

**The deadline for receipt of all submissions is 5 pm on Friday 27 October 2017.**

## How to have your say

Have your say by reviewing the proposed SWIs and completing the submission form for the particular SWI.

WorkSafe would appreciate your feedback on the specific questions it has asked on each SWI. Note that the questions are prompts to get you thinking about the issues, and your comments are not restricted to answering these questions.

If you have any questions during public consultation please contact WorkSafe by emailing: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

## Your submission may be made public

Once you make your submission, anyone can ask for it under the Official Information Act 1982 (the OIA).

Further information is available at: [www.legislation.govt.nz](http://www.legislation.govt.nz)

## What happens next

Once the consultation period has closed, we will analyse submissions and reconsider the proposed SWIs to take account of them. WorkSafe will provide a summary of submissions received and any changes made to the draft SWIs.

## Executive summary

### Health and safety reforms

In 2013 the Independent Taskforce on Workplace Health and Safety (the Taskforce) reported that New Zealand's work health and safety system was failing.

As a result, New Zealand's work health and safety system underwent its most significant reforms for 20 years resulting in the establishment of WorkSafe New Zealand and the enactment of the Health and Safety at Work Act 2015, which came into effect on 4 April 2016.

## Management of hazardous substances

The Taskforce found that occupational health and hazardous substances management was performing poorly. In particular, it found the overly complex framework for workplace management of hazardous substances was contributing to this performance.

The Government proposed a number of changes in response to the Taskforce findings to help create a clearer hazardous substances regime and to provide greater certainty for businesses and workers managing hazardous substances. This included the transfer of requirements for the management of hazardous substances that affect human health and safety in the workplace from the HSNO regime to the HSWA regime.

The recently made Health and Safety at Work (Hazardous Substances) Regulations 2017 (the HS Regulations) give effect to this proposal.

However, they do not contain some of the more detailed technical requirements or modified compliance requirements that were imposed under the HSNO regime to specific types of industry, equipment, activities, or individually-approved substances.

SWIs are the tool best suited to carry on these existing requirements under the HSWA regime.

## What is a safe work instrument?

SWIs are a new tool provided for in section 227 of the HSWA. They are a type of subordinate instrument (sometimes called tertiary legislation) used to support or complement regulations. SWIs are developed by WorkSafe and approved by the Minister for Workplace Relations and Safety. The Minister must not approve a SWI unless the Minister is satisfied that appropriate persons and organisations have been consulted on it, having regard to its subject matter.

A SWI has legal effect only to the extent it is referred to in regulations made under relevant health and safety legislation, such as the HSWA. SWIs can be made for the purposes of defining terms, prescribing matters, or making other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.

In the context of the HS Regulations, they can also:

- set additional or modified requirements for the work-related use of hazardous substances approved or reassessed by the Environmental Protection Authority (EPA)
- provide an alternative means of complying with requirements in certain provisions of the HS Regulations, and

- support the effective operation of the health and safety regulatory framework, for instance by prescribing workplace exposure standards.

Further information about safe work instruments can be found on WorkSafe's website:

[www.worksafe.govt.nz](http://www.worksafe.govt.nz)

## Hazardous substances safe work instruments

We are seeking your views on two types of SWIs that will apply to the work-related use of hazardous substances:

- SWIs intended to continue additional or modified requirements already imposed on individual substances approved by the EPA; and
- SWIs that prescribe alternative requirements for a specific industry.

These SWIs are timed to take effect on the same date the HS Regulations come into force: 1 December 2017 (Day One). Similarly, the hazardous substances SWIs recently consulted on by WorkSafe will commence on Day One (Annex 1 refers). This timing is intended to ensure that duty-holders complying with requirements set under the HSNO regime transition smoothly to the HSWA regime.

The purpose of these SWIs is to ensure existing HSNO requirements are reflected in the HSWA regime. This consultation is not intended to seek views on whether substantive changes are required but rather is focussed on ensuring PCBUs that are currently compliant under the HSNO regime will be compliant under the HSWA regime.

A more substantive review of the regulatory regime for hazardous substances will start two years after the HS Regulations come into force.

## Day One safe work instruments

### Safe work instrument to continue existing practice

SWIs can be used to prescribe requirements to be met by a person before they charge an LPG cylinder.

Currently the EPA has a delegation in place with the Liquefied Petroleum Gas Association of New Zealand (LPGA). The delegation allows training to be delivered to the LPG industry who charge LPG cylinders and for those individual workers to be certified as approved fillers. When the regulations come into force, those workers will no longer be called 'approved fillers'.

WorkSafe is engaging with the LPGA to develop a similar agreement to ensure individuals can continue to complete the LPGA training, be certified by a site trainer and continue to charge LPG cylinders of less than 110 kg water capacity.

A specific SWI is proposed to specify requirements for a person who is not an approved filler but who is instead trained in accordance with an LPGA training and competence scheme and certified by an approved site trainer. This is to ensure that the work those persons do is compliant with the HS regulations.

### 1. REQUIREMENTS FOR CHARGING LPG CYLINDERS OTHER THAN BY APPROVED FILLERS

WorkSafe proposes to develop a SWI requiring persons who are not approved fillers but wish to charge LPG cylinders of less than 110 kg water capacity to:

- have completed training in accordance with the LPGA training programme offered by the LPGA and delivered by an LPGA authorised site trainer
- hold a certificate of training that is valid for five years and is issued by a site trainer, certifying that the person has completed the training and has been assessed competent
- be employed or engaged by a PCBU who is a member of the LPGA
- specifies that an annual refresher training is required.

The proposed SWI also provides a transitional arrangement for site trainers and approved fillers who were authorised to operate prior to the commencement of the SWI. This SWI will allow existing practices to continue until 30 June 2018.

The relevant referring provision is 15.64(2)(b).

### Modified requirements for hazardous substances

WorkSafe recently consulted on a hazardous substances SWI for fumigants. This SWI was developed to continue workplace controls imposed by the EPA on certain approved substances and also incorporate other substance-specific controls that have not been included in the HS Regulations.

The EPA recently approved the hazardous substance AFE-HFP and as part of that approval modified requirements have been applied to that substance. This requires additional provisions to be included in the proposed *Requirements for Specified Fumigants* SWI to ensure the additional requirements apply under HSWA.

### 2. REQUIREMENTS FOR SPECIFIED FUMIGANTS

WorkSafe proposes to include the following requirements in this SWI:

- Specify that regulation 14.4 *Additional fumigants under personal control of certified handler* applies to AFE-HFP.

- b. Specifies for the purpose of regulation 14.20(2) (c) that a PCBU with management or control of fumigation using AFE-HFP must ensure that the application block is not more than 32 hectares.
- c. Specify that regulation 14.21 *Entry restriction for application block* applies to AFE-HFP.
- d. Specify that regulation 14.22 *PCBU to set buffer zones* applies to AFE-HFP.
- e. Specify that regulation 14.23 *Restrictions on application of fumigant to soil* applies to AFE-HFP.
- f. Specify that regulation 14.24 *Entry restriction for buffer zone* applies to AFE-HFP.
- g. Specify that regulation 14.26 *Application timing and conditions* applies to AFE-HFP.
- h. Specify that regulation 14.27 *Sealing soil after fumigation: Tri-Form 60 and new fumigants* applies to AFE-HFP.
- i. Modify the notification requirements to require PCBUs who intend to carry out fumigation using AFE-HFP to notify Fire and Emergency New Zealand with the following specific information:
  - i. potential chemical, toxicological, or ecotoxicological hazards
  - ii. any relevant prescribed exposure standard or tolerable exposure limit for the substance
  - iii. first aid measures
  - iv. minimum personal protective equipment requirements
  - v. evacuation procedures
  - vi. substance detection equipment
  - vii. mitigation measures.
- j. Modify the notification requirements to require a PCBU who intends to carry out fumigation using AFE-HFP to also notify each person who may be affected by the fumigation who is normally present within 100 m from the outer edge of the buffer zone.
- k. Modify the signage requirements and require a PCBU with management or control of fumigation using AFE-HFP to erect signs around the perimeter of the buffer zone at every point of entry to the buffer zone and require that these signs are removed within 72 hours of the end of the buffer zone period.
- l. Modify the soil condition requirements and require a PCBU must ensure at the beginning of the application of AFE-HFP that the soil temperature at the depth of injection of AFE-HFP is a minimum of 10°C and does not exceed 27°C.

The relevant referring provisions of the Regulations that enable the development of this SWI are:

- a. 14.4(1)(c)
- b. 14.7(4)
- c. 14.10(4) and (5)(b)
- d. d. 14.20(2)(c)
- e. 14.21(1)(c)
- f. 14.22(1)(c)
- g. 14.23(1)(c)
- h. 14.24(1)(c)
- i. 14.26(1)(b) and (3)
- j. 14.27(1)(b)

### **Costs and benefits of proposed day one safe work instruments**

Day One SWIs for hazardous substances incorporate existing HSNO requirements into the HSWA regime. The intent of these SWIs is to ensure duty-holders currently complying with existing requirements can continue to be compliant under HSWA. They do not impose new obligations or costs onto duty-holders.

As required under section 227 of HSWA, the proposed SWIs will be available free of charge on WorkSafe's website. They may also be purchased in hard copy at a reasonable charge (if any).

The benefit of the SWIs is that they enable duty-holders to continue to operate as they currently are under equivalent provisions of the HSNO regime.

### **Implementation**

Following consultation, the proposed SWIs will be finalised and then submitted to the Minister for Workplace Relations and Safety for the Minister's consideration.

The SWIs will be published on WorkSafe's website once they are approved. WorkSafe will inform you when these are published.

**Annex 1:  
Safe work instruments previously consulted on to replace HSNO codes of practice  
and substance specific requirements**

<b>HSNOCOP NUMBER</b>	<b>HSNOCOP TITLE</b>	<b>SWI TITLE</b>
11-2	Design and Construction of Above Ground Rotationally Moulded Tanks for Automotive Diesel Fuel	Health and Safety at Work (Hazardous Substances—Polyethylene Above Ground Stationary Tanks for Diesel Fuel) Safe Work Instrument 2017
13	Management of Existing Stationary Container Systems up to 60 000 litres Capacity	Health and Safety at Work (Hazardous Substances—Management of Pre-2006 Stationary Container Systems up to 60,000L) Safe Work Instrument 2017
14	Filling of Below Ground Petrol Tanks by Pumping	Health and Safety at Work (Hazardous Substances—Filling of Below Ground Petrol Tanks by Pumping) Safe Work Instrument 2017
17	Design and Construction of Above Ground Stationary Tanks to ULC-ORD-C80.1-2000	Health and Safety at Work (Hazardous Substances—Design and Construction of Above Ground Stationary Tank to ULC-ORD-C80.1-2000) Safe Work Instrument 2017
19	Disused Below Ground Stationary Tanks on Farms	Health and Safety at Work (Hazardous Substances—Action Taken in Relation to Disused Below Ground Tanks on Farms) Safe Work Instrument 2017
21-1	Pipework Marking for class 3.1 Flammable Liquid Fuels in Storage Depots	Health and Safety at Work (Hazardous Substances—Markings for Pipework Connected to Above Ground Stationary Tanks) Safe Work Instrument 2017
24	Above Ground Stationary Tanks with Integral Secondary Containment	Health and Safety at Work (Hazardous Substances—Reduced Secondary Containment for Certain Above Ground Stationary Tanks) Safe Work Instrument 2017
46	Non refillable cylinders manufactured to BS EN 12205: 2001	Health and Safety at Work (Hazardous Substances—Specification of Standard Relating to Non-Refillable Containers) Safe Work Instrument 2017
56	Design and Construction of Thermoplastic Tanks for Class 6, 8 and 9 Hazardous Liquids	Health and Safety at Work (Hazardous Substances—Thermoplastic Stationary Tanks) Safe Work Instrument 2017
4	Thermoplastic Stationary Tanks and Process Containers for Hazardous Liquids with Class 5, 6, 8 and 9 Hazard Classifications	
60	Stationary Container systems Connected to a Generator Set	Health and Safety at Work (Hazardous Substances—Above Ground Stationary Tanks Connected to a Generator Set) Safe Work Instrument 2017
12	Rotationally Moulded Polyethylene (PE) Tanks to AS/NZS 4766 for Non Flammable Hazardous Substances	Health and Safety at Work (Hazardous Substances—Above Ground Rotationally-Moulded Polyethylene Stationary Tanks) Safe Work Instrument 2017
61	Rotationally Moulded Polyethylene Storage Tanks for Non Flammable Hazardous Substances	

## SUBSTANCE SPECIFIC REQUIREMENTS

<p>Dichlorvos-containing substances:</p> <ul style="list-style-type: none"> <li>a. aerosol containing 50g/kg dichlorvos, HSNO approval number HSR000212</li> <li>b. emulsifiable concentrate containing 1 kg/L dichlorvos, HSNO approval number HSR000211</li> <li>c. emulsifiable concentrate containing 1.14 kg/L dichlorvos, HSNO approval number HSR000213</li> </ul>	<p>Health and Safety at Work (Hazardous Substances—Additional and Modified Requirements for Specified Class 6 and 8 Substances) Safe Work Instrument 2017</p>
<p>Raxil Star (HSNO approval number HSR101132)</p>	
<p>Poncho Votivo (HSNO approval number HSR101149)</p>	
<p>Dianex (HSNO approval number HSR101016)</p>	
<p>Firefly (HSNO approval number HSR007993)</p>	
<p>Melody Duo (HSNO approval number HSR001616)</p>	
<p>Melody Duo NF (HSNO approval number HSR007814)</p>	
<p>Fumithor™ Delta Insecticide Smoke Generator (HSNO approval number HSR101185)</p>	
<p>Grainguard Supersmoke (HSNO approval number HSR10100)</p>	
<p>Perfringolysin O Protein (HSNO approval number HSR101206)</p>	
<p>PAPP Ready-to-use Bait (HSNO approval number HSR100496)</p>	
<p>Tri-Form 60</p>	
<p>Ripper Range</p>	
<p>Methyl bromide</p>	



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