

Summary of submissions

*HAZARDOUS SUBSTANCES
SAFE WORK INSTRUMENTS*

APRIL 2021



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Purpose

This document summarises the responses received from consultation on three proposed safe work instruments (SWIs) under the Health and Safety at Work (Hazardous Substances) Regulations 2017. Any feedback resulting in changes to the SWIs are included along with the next steps.

About safe work instruments

A safe work instrument is a form of legislation that supports or complements regulations. Also known as tertiary legislation, SWIs allow greater flexibility and more timely updates to the regulatory framework to reflect changes in technology, standards, substances, and/or health and safety practices.

SWIs have legal effect only where they are referred to in regulations. All SWIs should be read in conjunction with regulations and do not stand alone or independently of them.

The WorkSafe New Zealand Act 2013 gives WorkSafe the function of developing SWIs. Section 277 of the Health and Safety at Work Act 2015 (HSWA) allow SWIs to be developed to:

- a. define terms,
- b. prescribe matters, or
- c. make other provision in relation to any activity or thing, including (without limitation)
 - d. listing standards,
 - e. control of substances, and
 - f. competency requirements.

A SWI must be approved by the Minister for Workplace Relations and Safety. Before approving, the Minister must be satisfied that the appropriate persons and organisations have been consulted.

More information about SWIs can be found on our website: worksafe.govt.nz/laws-and-regulations/safe-work-instruments.

Proposed safe work instruments

Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Amendment Safe Work Instrument 2021

Proposed change: Amendment of an existing SWI.

Substances affected: AFE-HFP and Tri-Form 80 (fumigants).

Summary of change: Updating the soil condition requirement for AFE-HFP and adding controls for new substance Tri-Form 80.

Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Amendment Safe Work Instrument 2021

Proposed change: Amendment of an existing SWI.

Substances affected: NPD 100 PLUS (retail fuel).

Summary of change: Removing the tracking requirement so the substance can be sold to the public.

Health and Safety at Work (Hazardous Substances – Additional Pesticides Subject to Transport Restrictions) Safe Work Instrument 2021

Proposed change: New.

Substances affected: Hercon Vaportape II Insecticidal Strips (pesticide).

Summary of change: Adding controls for a new substance to Aotearoa New Zealand.

Consultation

Between 17 December 2020 and 5 February 2021, WorkSafe consulted on three proposed SWIs to complement the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations).

Over 14,500 people were notified over the consultation period. The draft SWIs and consultation forms were available to the general public on WorkSafe's website throughout the consultation period.

Submissions

Each SWI had its own submission form. A total of five submissions were received. Two submissions provided support generically for all three SWIs.

The other three submissions were supportive. One submission commented that wording could be simplified for a specific clause in the Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Amendment Safe Work Instrument 2021. We have adopted this change.

There are no changes to the other two SWIs.

Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Amendment Safe Work Instrument 2021

Safe work instruments often apply to categories of substances. AFE-HFP, Tri-Form 60, and Tri-Form 80 are all fumigants.

This SWI is an amendment of an existing SWI. The existing SWI is described below.

Name	Health and Safety at Work (Hazardous Substances - Requirements for Specified Fumigants) Safe Work Instrument 2017 (Specified fumigants SWI).
Regulatory requirement	The requirement to maintain health and safety for class 6 and 8 substances is specified in Part 13 of the Regulations. Additional requirements can be specified in Part 14.
Purpose of SWI	To describe which regulations in Part 14 apply to which fumigant.
Substances included in SWI	AFE-HFP, HSNO approval number HSR101251. Tri-Form 60, HSNO approval number HSR100563.

The proposed SWI will add additional controls for a new fumigant and amend a clause in the existing Specified fumigants SWI.

Proposed name of SWI	Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Amendment Safe Work Instrument 2021.
Type of SWI	Amendment.
Proposed substance addition	Tri-Form 80, provisional HSNO approval number HSR101451.
Other changes	Update the temperature clause for controls relating to AFE-HFP.

FIXING CONTROLS RELATING TO AFE-HFP

Clause 12 in the current safe work instrument requires AFE-HFP to comply with regulation 14.26 of the Regulations. This requires the soil to be of a specific temperature and moisture content before beginning application.

The EPA completed a re-assessment in December 2012 that found:

- a. the requirements in relation to the minimum soil temperature had changed, and
- b. there was a technical error in the moisture content range when defined by the USDA Feel and Appearance method.

Proposed change	Update the temperature of the soil condition requirements for AFE-HFP to align with the new EPA decision. This will mean: <ul style="list-style-type: none"> - the soil temperature at the depth of injection for AFE-HFP will change <i>from</i> a minimum of 10°C to a minimum of 5°C, and - the moisture content of the soil as defined by the USDA Feel and Appearance method will change <i>from</i> 75-100% to 50-75%.
Justification	The increased risk from using AFE-HFP at soil temperatures down to 5°C is considered negligible, provided plastic sheeting is used to cover the soil. It will allow the fumigant to be used in more geographical areas.
Number of submissions for proposed change	0
WorkSafe response	No change required to the draft SWI.

PROPOSED CONTROLS RELATING TO TRI-FORM 80

Six additional requirements were proposed regarding new substance Tri-Form 80. Only two of the six changes received specific consultation submissions. These two are discussed below. A full list of the additional controls proposed, including the four not discussed here, can be found in the Annex.

Proposed change	A person conducting a business or undertaking who intends to carry out fumigation needs to notify specific persons as described in regulation 14.7 of the Regulations. Technical assessment has concluded that specific persons for Tri-Form 80 are each person who may be affected by the fumigation and is normally present within 100m from the outer edge of the buffer zone. As these details are not included in the Regulations, WorkSafe proposed adding this requirement under Regulation 14.7(4).
Justification	The proposed change aligns with those required by similar substances AFE-HFP and Tri-Form 60 in Part 14. The notification allows persons to have adequate time to take appropriate steps to avoid exposure, which could result in adverse health effects.
Number of submissions for proposed change	1

Comments	<ul style="list-style-type: none"> - Support for the practice of notifying neighbouring and potentially impacted parties. - The Regulations require a person conducting a business or undertaking to notify the nearest Fire and Emergency Communication Centre when fumigants are applied in certain ways and places. These requirements will apply to Tri-Form 80 when the conditions in the Regulations are met.
WorkSafe response	Noted. No change required to the draft SWI.
Proposed change	<p>A person conducting a business or undertaking who intends to carry out fumigation is required to erect signs at the perimeter of the risk area. Different substances need different signage requirements.</p> <p>WorkSafe proposed modifying the signage requirement for Tri-Form 80 so that signs are to be erected at the perimeter of the buffer zone. This is different to the Regulations, which require signs to be erected at the perimeter of the risk area.</p> <p>Modified signage requirements for a fumigant can be made under regulation 14.10(1).</p>
Justification	<p>The proposed change aligns with signage requirement for similar substances AFE-HFP and Tri-Form 60 in Part 14.</p> <p>Putting up signs ensures that unprotected people do not enter the buffer zone and put themselves at risk.</p> <p>The Regulations don't have requirements for signage at the perimeter of the buffer zone because some fumigants do not have buffer zone requirements.</p>
Number of submissions for proposed change	1
Comments	<ul style="list-style-type: none"> - The language of 'signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone' is unclear. If the intention is that signs are required at points of entry, then it could just say 'at every point of entry to the buffer zone'. - It is consequently uncertain whether the intent is that other signs will also be erected elsewhere around the buffer zone perimeter, other than at points of entry. We recommend that WorkSafe rephrase this requirement so that it is clear. This will help both PCBUs and enforcement personnel.
WorkSafe response	<p>This is a valid comment. The wording can be hard to interpret.</p> <p>The intent of the regulation is to stop persons other than fumigation workers from accessing the buffer zone. After discussion, WorkSafe believes that removing the words 'around the perimeter' simplifies the language and does not detract from the intention of the regulation. Additionally, an interpretation of the regulation is available in WorkSafe's Hazardous substance signage Quick Guide (2019), which explains the expectation between perimeter and points of entry. The Quick Guide advises that for fumigants, signs should be:</p> <ul style="list-style-type: none"> - at every entrance to the area where fumigation will occur - at the perimeter of the area able to be seen by anyone approaching - at each entrance to the room or compartment if fumigation occurs in a room or compartment in a building or other enclosed space. <p>WorkSafe will replace under clause 6(22) of the proposed SWI:</p> <ul style="list-style-type: none"> - signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that— <p>with</p> <ul style="list-style-type: none"> - signs must be erected at every point of entry to the buffer zone that— <p>This change may affect other clauses in the Specified Fumigants SWI. The intent of the Tri-Form 80 signage requirements is the same as those substances already in the Specified fumigants SWI: Tri-Form 60, AFE-HFP, and Ripper range. These three substances have the same wording as the proposed SWI in clauses 6, 7, and 14.</p> <p>Changing the wording only for Tri-Form 80 implies that there is a difference between Tri-Form 80 and the other substances. As there is not, WorkSafe will also amend these clauses to simplify the wording for signage across the SWI.</p>

Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Amendment Safe Work Instrument 2021

NPD 100 PLUS is an approved substance. WorkSafe proposed amending an existing SWI to allow NPD 100 PLUS to be sold to the public as a retail fuel.

Name	Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Safe Work Instrument 2018.
Regulatory requirement	Under Part 19, class 3.1A substances are required to be tracked (see Table 1, Schedule 26 of the Regulations). Tracked substances must not be sold, transferred, or delivered unless the supplier has written notification that there is a competent person who will take responsibility for the substance. These requirements effectively prevent class 3.1A substances from being sold to the public.
Purpose of SWI	Certain class 3.1A substances are appropriate to the sell to the public (eg., fuel). Table 3 in Schedule 26 list substances that do not require to be tracked. Under regulation 19.3, a substance can be added to this table by a SWI. This SWI fulfils that purpose.
Substances included in SWI	FuelMix – Premixed 2-stroke fuel, HSNO approval number HSR101281. Petrol-methanol blends containing up to 15% methanol by volume, HSNO approval number HSR101325.

The proposed SWI will add another substance to Table 3 in Schedule 26 of the Regulations.

Proposed name of SWI	Health and Safety at Work (Hazardous Substances – Additional Substances That Do Not Require Tracking) Amendment Safe Work Instrument 2021.
Type of SWI	Amendment.
Proposed substance addition	NPD 100 PLUS, HSNO approval number HSR101436.
Proposed change	NPD 100 PLUS is a class 3.1A substance intended to be sold as a retail fuel. WorkSafe proposed adding NPD 100 PLUS to Table 3 of Schedule 26 in the Regulations to remove the tracking requirements, and therefore allow the substance to be sold to the public.
Justification	NPD 100 PLUS is similar to other fuels that can be found in Table 3 of Schedule 26. Service station persons conducting a business or undertaking are already familiar with the measures required to manage the risks of fuels.
Number of submissions for proposed change	2
Comments	<ul style="list-style-type: none"> – Support for the addition of NPD 100 PLUS to Table 3 of Schedule 26. – The inclusion is a pragmatic approach and recognises the existing level of training within the retail fuel sector for the safe handling and storage of such hazardous substances. – For all intents and purposes, this product is identical to similar petrol products. – All other controls are still required to prevent unintended ignition or release.
WorkSafe response	Noted. No change required to the draft SWI.

Health and Safety at Work (Hazardous Substances – Additional Pesticides Subject to Transport Restrictions) Safe Work Instrument 2021

Hercon Vaportape II Insecticidal Strips is a new class 6.1 pesticide intended to control Carpophilus beetles in commercial stone fruit and berry orchards. The EPA has only provisionally approved the substance as additional controls are required to maintain health and safety. The active ingredient is dichlorvos (also known as DDVP), which can be harmful if inhaled.

As there is no existing SWI detailing additional requirements for pesticides, this proposed change requires the creation of a new SWI.

Regulatory requirement	Regulation 13.15 of the Regulations requires that a person transporting a pesticide in a vehicle must ensure the pesticide is contained in a sealed, unopened sachet, or in an airtight container. Class 6.1 pesticides can release harmful vapours, and exposure through inhalation can occur if vapours accumulate in a vehicle when the substance is transported in an open packet.
Purpose of SWI	The Regulations foresaw that new, class 6.1 pesticides may be introduced after the Regulations were written. To maintain health and safety for these new pesticides, regulation 13.2(b) allows a SWI to determine which substances must obey regulation 13.15. This SWI fulfils that purpose.
Type of SWI	New.
Proposed SWI	WorkSafe proposed adding this substance as a class 6.1 pesticide requiring the controls in regulation 13.15 to avoid adverse health affects during transport.
Justification	Regulation 13.15 is currently only required by a DDVP-impregnated device ¹ . Hercon Vaportape II Insecticidal Strips is similar to this substance, and therefore should require the same health and safety controls.
Number of submissions for proposed change	0
WorkSafe response	No change required to the draft SWI.

Next steps

WorkSafe is now finalising the three safe work instruments. They will be provided to the Minister for Workplace Relations and Safety to consider in April 2021.

If approved, the requirements provided in the SWIs will come into effect later this year.

All approved SWIs are published on WorkSafe's [website](#).

For more information, please visit worksafe.govt.nz, or email regulatory.frameworks@worksafe.govt.nz

¹ HSNO approval number HSR000126.

Annex: All proposed requirements for Tri-Form 80

Part 14 of the Regulations places additional requirements that apply to specific fumigants. It also contains regulations that enable SWIs to apply the same requirements to other fumigants approved over time.

WorkSafe is proposing the new fumigant Tri-Form 80 must comply with requirements similar to those imposed on other fumigants in the Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Safe Work Instrument 2017 (the Specified Fumigants SWI).

The proposed requirements are outlined below. These additional controls will manage the risks to the health and safety of workers and others. This information is all contained within the Health and Safety at Work (Hazardous Substances – Requirements for Specified Fumigants) Amendment Safe Work Instrument 2021.

Additions to the Specified Fumigants SWI

Tri-Form 80 will be required to comply with the relevant provisions of the Regulations listed below.

Glossary

application block	an area within a defined boundary where a fumigant is applied to the soil in any 24-hour period (including any untreated areas within that boundary).
buffer zone	the minimum distance that must exist between the perimeter of the application block and the public.
PCBU	a person conducting a business or undertaking.

REGULATION 14.4: ADDITIONAL FUMIGANTS UNDER PERSONAL CONTROL OF CERTIFIED HANDLER

Regulation 14.4(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with regulation 14.4.

What will be required?

Regulation 14.4(2) will now apply to Tri-Form 80.

A PCBU with management or control of work using Tri-Form 80 is to ensure that Tri-Form 80 is:

- a. under the personal control of a certified handler, or
- b. appropriately secured from access by persons other than a certified handler or a person who may handle the fumigant according to the conditions outlined in regulation 14.4(5), which are described further below.

Regulation 14.4(3) will now apply to Tri-Form 80.

The PCBU must ensure that no person other than a certified handler handles Tri-Form 80.

Regulation 14.4(4) will now apply to Tri-Form 80.

The PCBU must ensure no person may slice or remove the plastic sheets used to cover soil treated with Tri-Form 80 within 14 days of the start of fumigation unless:

- a. that person is a certified handler, and
- b. at least one other person is present when the slicing or removal takes place.

Regulation 14.4(5) will now apply to Tri-Form 80.

Persons who are not certified handler may handle Tri-Form 80, or slice or remove the plastic sheets used to cover the soil treated with Tri-Form 80, provided that a certified handler:

- a. is present at the place within the workplace where the person is handling Tri-Form 80, or slicing or removing the sheets (or both), and
- b. has provided guidance to the person about handling Tri-Form 80, or slicing or removing the sheets (or both), and
- c. is available at all times to assist the person, if necessary, at any time while they are handling Tri-Form 80, or slicing or removing the sheets (or both), and
- d. ensures that the person has successfully completed a training course specific to Tri-Form 80 before handling Tri-Form 80, or slicing or removing the sheets (or both).

Under regulation 14.4(5)(b), a person identified in regulation 4.4 of the Regulations as a person who does not require a compliance certificate as a certified handler, such as an inspector under HSWA or a member of the New Zealand Police, may also handle Tri-Form 80, or slice or remove the plastic sheets.

What are the reasons for these requirements?

These requirements ensure that only appropriately trained or supervised people handle Tri-Form 80 and slice or remove the plastic sheets covering soil treated with Tri-Form 80. This will help to ensure that the risks associated with Tri-Form 80 are understood and managed effectively.

The active ingredients in Tri-Form 80 continue to present a significant risk for up to 14 days after application.

REGULATION 14.20: SIZE OF APPLICATION BLOCK

Regulation 14.20(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation. Regulation 14.20(2)(c) allows a safe work instrument to specify the maximum area of the application block.

What will be required?

The maximum size of the application block will be 32 ha.

What is the reason for this requirement?

Limiting the size of the application block area reduces the likelihood of exposure to Tri-Form 80 for workers who are not directly involved in fumigation and others.

The greater the area the more fumigant is released, and more people could be exposed.

REGULATION 14.21: ENTRY RESTRICTION FOR APPLICATION BLOCK

Regulation 14.21(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation.

What will be required?

A PCBU with management or control of fumigation using Tri-Form 80 must ensure that, from the start of the buffer zone period until the fumigation is complete, no person is in, or enters, an application block unless they meet certain requirements.

The requirements include:

- a. being trained in the use of Tri-Form 80, and
- b. wearing appropriate PPE, and
- c. being there for one of the specific purposes outlined in Regulation 14.21, such as to handle Tri-Form 80, or to install, inspect, or repair the plastic sheeting used in the fumigation.

What are the reasons for these requirements?

Access to the application block is restricted because people can still be exposed to residual Tri-Form 80 during the buffer zone period. Exposure may result in adverse health effects.

REGULATION 14.22: PCBU TO SET BUFFER ZONES

Regulation 14.22(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation. Regulation 14.22(8) allows a safe work instrument to specify the buffer zone size.

What will be required?

A PCBU with management or control of fumigation using Tri-Form 80 must set a buffer zone around the perimeter of the application block for each fumigation. The buffer zone must not be less than 8m and must meet the relevant requirements outlined in regulation 14.22.

What is the reason for these requirements?

The purpose of the buffer zone is to exclude people not directly involved in fumigation from the area close to where Tri-Form 80 has been applied, so that they are not exposed to harmful levels of Tri-Form 80.

REGULATION 14.23: RESTRICTIONS ON APPLICATION OF FUMIGANT TO SOIL

Regulation 14.23(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation.

What will be required?

A PCBU with management or control of fumigation using Tri-Form 80 must ensure it is not applied within 400 metres of a place within a workplace where the public is likely to be present and unable to readily evacuate, or in specified areas, buildings and locations in the buffer zone.

These areas, buildings and locations are listed in regulation 14.23(4) and include residential areas, publicly owned parks, and sheds and barns where people may be present during the buffer zone period.

What is the reason for these requirements?

Restricting the areas where Tri-Form 80 can be applied will protect the public and workers not directly involved in fumigation from exposure, which could result in adverse health effects.

REGULATION 14.24: ENTRY RESTRICTION FOR BUFFER ZONE

Regulation 14.24(1)(c) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation.

What will be required?

A PCBU with management or control of fumigation using Tri-Form 80 must, for the duration of the buffer zone period, ensure that the only people within the buffer zone are:

- a. people permitted to enter who meet specific requirements outlined in the

Regulations and are wearing PPE, or

- b. people travelling through the buffer zone in vehicles (including bicycles) on roads, whose total transit time through that zone within any 24-hour period is less than 15 minutes.

What is the reason for these requirements?

Restricting entry to the buffer zone so that only certain people can enter, and setting total transit times, will limit exposure to Tri-Form 80. Being exposed for 15 minutes or longer may cause adverse health effects.

REGULATION 14.26: MEASURES REQUIRED TO RESTRICT FUMIGANT EMISSION FROM TREATED SOIL²

Regulation 14.26(1)(b) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation. Regulation 14.26(3) allows a safe work instrument to prescribe modified soil condition requirements.

What will be required?

A PCBU with management or control of fumigation using Tri-Form 80 must ensure at the beginning of the application that:

- a. the soil temperature at the depth of injection of Tri-Form 80 is a minimum of 5°C and does not exceed 27°C; and
- b. the moisture content of the soil is:
 - i. equal to or more than 70% when measured with a tensiometer, or
 - ii. between 50–75% as defined by the USDA Feel and Appearance method.

What is the reason for these requirements?

The soil temperature and moisture content are critical factors in managing the retention and release of chloropicrin from treated soil, so they must be within the ranges specified in the Regulations.

REGULATION 14.27: SEALING SOIL AFTER FUMIGATION

Regulation 14.27(1)(b) of the Regulations allows a safe work instrument to specify another fumigant that must comply with this regulation.

What will be required?

Regulation 14.27 specifies how the soil must be sealed, compacted, or covered, depending on whether broadacre treatment or row treatment is being carried out, and whether plastic sheets are used.

For example, for broadacre treatment, the PCBU must ensure that soil fumigated with Tri-Form 80 is sealed to prevent fumigant loss. This is done by using equipment that will uniformly mix the soil to a depth of 8 to 10 cm. The soil surface must be compacted with a roller in combination with tillage equipment.

What are the reasons for these requirements?

Sealing, compacting or covering the soil after application of Tri-Form 80 slows down the release of fumigant gas from the soil. This minimises the potential for workers and others to be exposed to the gas, which could cause adverse health effects.

Additional modifications

² These soil condition requirements will be the same as those proposed for AFE-HFP in the Specified Fumigant SWI.

Clauses 13 and 14 of the Specified Fumigants SWI specify notification and signage requirements for AFE-HFP. WorkSafe proposes that similar modifications are specified for Tri-Form 80 for the following regulations.

REGULATION 14.7: NOTIFICATION OF INTENDED FUMIGATION

Regulation 14.7(4) of the Regulations allows a safe work instrument to modify the notification requirements for a fumigant referred to in that safe work instrument.

What will be required?

The modified requirement specifies the people who must be notified about the intended fumigation and when they must be notified (not less than 24 hours before the start of the fumigation).

What are the reasons for these requirements?

The proposed notification of intended fumigation requirement will ensure that everyone within 100m of the outer edge of the buffer zone is aware that fumigation using Tri-Form 80 will be carried out. They will have adequate time to take appropriate steps to avoid exposure.

REGULATION 14.10: PCBU MUST ERECT SIGNS

Regulation 14.10(4) of the Regulations allows a safe work instrument to prescribe modified signage requirements for a specified fumigant. The PCBU must ensure that the modified requirements are complied with.

What will be required?

Signs will be required at the perimeter of the buffer zone rather than the perimeter of the risk area. The PCBU must place signs at the perimeter of the buffer zone that include certain details, such as a description of the general type of hazard associated with Tri-Form 80.

The signs must be removed within 72 hours of the end of the buffer zone period.

What are the reasons for these requirements?

The purpose of putting up signs is to ensure that unprotected people do not enter the buffer zone and put themselves at risk.

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