

Summary and analysis of submissions

***OUTCOME OF PUBLIC CONSULTATION ON THE
HEALTH AND SAFETY AT WORK (HAZARDOUS
SUBSTANCES – LOCATION COMPLIANCE
CERTIFICATION FOR CLASSES 2 TO 6, AND 8)
PERFORMANCE STANDARD***

October 2021



Te Kāwanatanga o Aotearoa
New Zealand Government

WORKSAFE
Mahi Haumarū Aotearoa



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Background

The function of issuing location compliance certificates is performed by compliance certifiers authorised by Worksafe to do so. Any PCBU who needs to obtain such a certificate must satisfy the relevant requirements prescribed in the Health and Safety at Work (Hazardous Substances) Regulations (HS Regulations).

Under regulation 6.43 of the regulations, WorkSafe may issue performance standards setting out the information and process requirements that a compliance certifier must comply with when performing their functions, including issuing location compliance certificates.

The purpose of the Health and Safety at Work (Hazardous Substances - Location Compliance Certification for Classes 2 to 6, and 8) Performance Standard (the Performance Standard) is to set out the information and process requirements that a compliance certifier must comply with when issuing or renewing a location compliance certificate. It sets performance expectations for compliance certifiers intended to ensure consistent and transparent decision making.

In particular, the performance standard:

- sets out the requirements which must be verified and assessed
- details the information needed to make a proper assessment
- specifies the information to be recorded in the location compliance certificate, including information setting out its scope, and
- requires compliance certifiers to keep a record of the information considered in, and the reasons for, deciding to issue or not to issue a location compliance certificate.

Submitters

NUMBER	SUBMITTER
1	EnvironHaz
2	Chemsafety Ltd
3	MFI Compliance Ltd
4	Confidential
5	HazSubs Services Ltd
6	Motor Trade Association (Inc)
7	NZ Institute of Hazardous Substance Management Inc

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Overview		2	The layout of the document is difficult to read. This may be constrained by regulatory drafting guidelines, but any improvement would be welcomed.	The layout is constrained by the template. A lot of effort was put into the document at consultation draft phase to make it as user friendly as possible. It is not intended to further revisit this issue.
Overview		2	The performance standard is not a place to impose requirements on certifiers or PCBUs that are not consistent with the requirements in the legislation, including additional or more stringent matters.	The standard is to be issued under Reg 6.43. It is required to reflect the provisions of the HS Regulations and set out the information and process requirements. The individual items raised by the submitter have been addressed under the individual clause numbers.
Overview		3	Other than these few comments the document reads and works well in my opinion.	Noted.
Overview		4	<p>I am pleased to be seeing some regulations come in. I agree that there needs to be either further regulation in this area but also there are many not complying with the current laws. I spend a lot of time and money on compliance due most of the products I import are HAZD like nail polish, monomers, removers.</p> <p>I own a commercial premises showroom, EPA registered, keep our DG under the correct limits, ensure safe storage, have health and safety procedures in place, extinguishers, firewalls, sprinklers, public liability insurance etc. We ship all HAZD products on couriers as DG, with DGLQ stickers and declarations. We make all our SDS available on our website to these couriers and to salons.</p> <p>I have to compete with businesses who do not comply and go under the radar. E-Bay, Amazon, Alibaba and many other on-line stores are selling HAZD products direct in to New Zealand and not declaring as DG. Others import and distribute from their homes. Many do not have HAZD cabinets which is a requirement outside a showroom, they don't have safety procedures or plans, they courier products as general cargo and do not hold insurance or provide SDS. The products they supply are often for professional use only to schools and commercial salons. This provides a public hazard both as these goods are moving on planes undeclared and being used in salons and schools without SDS.</p> <p>There are increasing allergies associated with many nail products and this is often through poor application techniques as there is no regulations in New Zealand around who can perform nail services. This is another problem and I am working with more schools to try to get them to train more students so they aren't forced to train at untrained salons or via product houses of these importers distributing from their homes. Some salon chains import direct to cut costs and with untrained staff there is a real risk for public health and safety.</p> <p>I am happy to discuss further with anyone in regards to specifically the nail industry in New Zealand. I am ex the transport and freight forwarding industry and a qualified customs broker. This is my first business and I am determined to comply, however I find that I am up against many who do not and compliance is very costly. Some couriers such as Fastway turn a blind eye to the companies that they transport goods for and many nail distributors use these courier companies. A look at their individual premises would show DGLQ stickers, SDS and declarations are absent.</p>	<p>This submission is noted but the content of the submission is outside the scope of the performance standard.</p> <p>The contents of this submission have been forwarded to the relevant enforcement functions.</p>

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Overview		5	What are the limits to the application of HS Regulation 6.23(3)(a), beyond which an application for exemption is absolutely necessary?	Guidance of this nature is outside the scope of the performance standard. The submission is noted for future provision of guidance.
Overview		6	<p>WorkSafe is New Zealand's primary workplace health and safety regulator. This includes providing regulatory confidence for New Zealanders regarding the oversight of hazardous substance storage and handling. Any performance requirements placed on compliance certifiers must ensure that the regulator is still performing its regulatory function. We have seen the issues arising from the failure of a regulator to adequately monitor, audit, and sanction its appointed certifiers within the vehicle inspection area. We would not want to see a repeat of this type of regulatory failure occurring in the hazardous substance regime.</p> <p>Throughout 2018 and 2019, MTA service station members have reported a change in service levels offered by several compliance certifiers around the country. Many reports relate to inconsistency in interpretation of rules and regulations. Other complaints relate to delays in obtaining final documentation for Location Compliance and Stationary Container Certification.</p> <p>MTA supports the issuing of a Safe Work Instrument (SWI) that describes compliance certifier performance requirements. This will go some way to addressing concerns raised by MTA service station members. However, we believe that the SWI requirements as currently written will lead to further problems.</p>	<p>Noted.</p> <p>The last paragraph is addressed in the separate sections of the submission as it applies to the sections of the performance standard (on the basis that the submitter intended reference to Performance Standard as opposed to Safe Work Instrument).</p>
Overview		6	<p>Additional comments</p> <p>MTA supports in principle the publication of a safe work instrument outlining the performance expectations of compliance certifiers. This will provide clarity and consistency to the process of assessing and issuing location compliance certification. We do, however, question the prescriptive nature of some aspects of performance measures in the absence of clear details of the level of regulatory oversight and audit of these measures.</p> <p>MTA members will bear the direct consequences of any increased costs associated with some of these prescriptive performance measures. We request that due consideration (including a cost benefit assessment) be carried out to determine the need for such a prescriptive set of performance requirements on compliance certifiers.</p>	<p>Noted. The individual items to be verified by the compliance certifiers is prescribed in the HS Regulations.</p> <p>With respect to the prescriptive detail, these:</p> <ol style="list-style-type: none"> 1. Enhance the consistency of performance by compliance certifiers. 2. Enable the prescribed requirement to audit compliance certifiers at least 4-yearly and the records required by this performance standard enables such audits to be made. <p>Whilst the detail is prescriptive, this establishes a standard but flexibility is introduced in clause 7(3) and 7(4) of the standard. Furthermore, the term 'record' has not been made specific.</p>

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Overview		7	<p>From the HSW Act 2015 the purpose is to protect 'workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work' or hazardous substances.</p> <p>In this case with storage and hazardous substance locations it is important that the PCBUs for the facility understand the critical requirements to achieve this.</p> <p>To date certifiers have found that a simple summary of critical items for the PCBU to demonstrate compliance with has been useful in achieving the above goal especially in cases where the PCBU has had minimal chemical knowledge in the past.</p> <p>While the proposed performance standard does contain much guidance for certifiers back to HS Regulation clauses it may be difficult and costly for untrained PCBUs to understand and demonstrate compliance with the whole 50 pages of this performance standard if certifiers are required to inform them and verify each of these.</p> <p>A simple summary may be easier for PCBUs to follow safely when a certifier is not present to assist them.</p> <p>Perhaps an overall one page 'critical safe hazardous substance items' summary may provide more assistance to the PCBU and certifier to achieve our mutual protection goal.</p> <p>It was believed that this document would be better as a guidance document rather than as a minimum location performance standard.</p>	<p>The actions required by compliance certifiers are prescribed in the HS Regulations. This performance standard reflects these prescribed requirements. A determination to certify to a lesser requirement is outside the scope of this performance standard.</p> <p>The performance standard is not intended to be guidance which is separately available for PCBUs and compliance certifiers on many of the certification requirements (for example, signage, training etc) as well as key safety controls.</p>
Part 1		4	<p>My concern first is identification of the businesses that are importing, handling and storing hazardous substances.</p> <p>There are also many home based salons that are not registered businesses but just have fb accounts.</p> <p>I attach a short list I started of businesses selling professional nail products from on-line stores in New Zealand. Many of these do so from residential homes where their children sleep at night and many courier as general cargo to commercial businesses as many nail products are professional only products.</p> <p>There are also many on-line stores selling HAZD products direct in to New Zealand and direct to commercial businesses. They do not declare this, but a quick look at E-Bay, Amazon, Alibaba etc shows all the hazardous products for sale including nail polish with little or no freight. It costs me US250 on top of my freight for any limit of DG I import, so again this puts people who comply on the back foot.</p> <p>Identifying and stopping the illegal importation of these substances entering New Zealand from these on-line stores also needs to be a priority. Not only are they arriving on planes undeclared as general cargo, the EPA has no idea what some salons are using on the public as no SDS is available.</p>	<p>This submission is noted but the content of the submission is outside the scope of the performance standard.</p> <p>The contents of this submission have been forwarded to the relevant enforcement functions.</p>
Part 1	5	5	<p>Please provide guidance to the definition of 'small office or other small building' as it is used in the definition of a protected place. If possible, please broaden it to include open stores (yards) used for storage of non-hazardous substances still associated with the use or storage of hazardous substances at the workplace.</p> <p>Please provide guidance on what constitutes 'a major function' in the definition of a protected place. Making lunch might not sound like a major function of a shoe factory, but if a majority of the workforce made their lunch.</p>	<p>Guidance of this nature is outside the scope of the performance standard. The submission is noted for future provision of guidance.</p>

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 1	5	6	<p>Preliminary provisions</p> <p>5(1): Use of a ‘competent person’ to submit reports to certifier.</p> <p>It is difficult to determine the risk assessment that WorkSafe has made with respect to compliance certification. The certification of hazardous substance management is deemed important enough to require sign-off by a qualified certifier, but that sign-off can be based on a report completed only by a ‘competent person’.</p> <p>There is no formal qualification required to be ‘competent’. A simple reading of the definition of a ‘competent person’ implies that one supervised visit to one site, along with instruction on the completion of a report, is enough to be called ‘competent’. A certifier will then confirm annual certification based on reports submitted. What verification processes should a certifier employ to remain ‘satisfied’ with the competence of the engaged/employed person? Is it possible for a certifier to provide location certificates annually for a period of several years without having physically returned to the relevant site?</p> <p>Further, the competent person is to be ‘employed or engaged’ by the certifier. This allows for the possibility that the person is also employed or engaged by the hazardous substance facility owner or has some other interest in the facility being certified (that is, land-owner, etc). What conflict of interest management policy applies to the competent person? The ‘competent person’ may avoid the conflict of interest controls placed on a compliance certifier as described in section 6.22 of the HS Regulations. Is there a necessary role for WorkSafe – as primary regulator – to validate the assessment of competence?</p> <p>MTA is interested in understanding the background to how the ‘competent person’ definition came to be included.</p> <p>We recognize there may be a shortage (current or impending) of compliance certifiers, which will impact on adequate coverage of hazardous substance sites. However, this capacity issue should not be addressed by mixed messages about risk and a potential abrogation of regulatory oversight.</p> <p>Depending on WorkSafe’s risk profile of this issue, MTA can see two outcomes:</p> <ul style="list-style-type: none"> - more rigor around assessing the suitability of competent persons; or - introducing a new system comprising ‘competent persons’ submitting reports and WorkSafe commissioning audits of those reports using qualified Certifiers. <p>Clarification of competence is described in Part 3 Sub part 4 (3) and covered in Health and Safety at Work (Hazardous Substances—Information and Process Requirements for Compliance Certifiers) Performance Standard 2018. However, MTA submits that this regime should apply a time-based condition that the ‘competent person’ achieves full compliance certifier status. A similar regime exists within the trainee equipment inspector system of the inspection organisations issuing certificates of inspection on hazardous equipment under the Pressure Equipment Cranes and Passenger Ropeways (PECPR) Regulations.</p>	<p>The meaning of the term competent person is included in the performance standard to specify the person’s minimum skill level.</p> <p>This has been further elaborated on by also specifying the requirements contained in the Health and Safety at Work (Hazardous Substances - Information and Process Requirements for Compliance Certifiers) Performance Standard. These requirements include ensuring continuing competence.</p> <p>As a result of the submission, the use of competent persons has been further qualified in clause 7(6).</p> <p>It is also noted that the auditing of certifiers also includes the auditing of competent persons they may use, including the assessment of the competent person by the compliance certifier, the information provided by the competent person to the compliance certifier and the process undertaken by the compliance certifier to verify the information provided by the competent person.</p>

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 2		4	<p>I believe there should be minimum limits in place where neighbour consent is required. That is, for businesses such as showrooms, chemists and nail, beauty salons, schools with nail polish and removers under 300kg should be exempt.</p> <p>I do believe companies who are using residential addresses for storage of DG should not do so due these are places where children and families sleep. Any resulting fire may be undetected until it is too late.</p>	This submission is noted but the content of the submission is outside the scope of the performance standard. The performance standard is required to reflect the provisions of the HS Regulations.
Part 2		6	<p>Assessing a hazardous substance location for a location compliance certificate</p> <p>The description of a 'competent person's' duties regarding location visits appear to suggest that the competent person collects information and makes judgements as to location compliance. This judgement is then submitted to the compliance certifier to effectively rubber stamp and then issue certification.</p> <p>In the comments on Part 1, MTA questioned how a compliance certifier would ensure or verify the ongoing competence of a 'competent person'. Similarly, having performed the duties noted above, it is not clear from the proposed SWI that the compliance certifier takes any responsibility for the quality or accuracy of the competent person's report, on which the certifier bases his or her final decision to issue site certification.</p> <p>The proposal to introduce a 'competent person' may provide greater service coverage (given the perceived certifier shortage), but it does have the potential to add extra costs to the certification process.</p> <p>There is no requirement for compliance certifiers to hold appropriate professional indemnity insurance. If this were required, would it encourage compliance certifiers to ensure that competent persons working under their control or supervision are indeed competent?</p>	<p>Refer decision comments above under Part 1 Clause 5.</p> <p>In addition to this, clauses have been inserted in 5(1) and 7(6) to:</p> <ol style="list-style-type: none"> 1. require the compliance certifier to assess the input of the competence person and 2. specify the scope of utilisation of a competent person. <p>WorkSafe has previously made a decision not to stipulate a minimum professional indemnity insurance.</p>
Part 2	10(1)	5	10(1): Please clearly state that the separation distance referred to in this clause is the separation distance referred to in Part 11 of the HS Regulations, in order to exclude separation distances to incompatibles, ignition sources etc.	The text has been amended to reflect the requirement of the HS Regulations.
Part 2	10(2)	5	10(2): Some workplaces may occupy land that comprises more than one real property (for example, separate leases) that are all managed by the same PCBU. Please amend with, 'unless the PCBU in charge of the neighbouring property is the same as the PCBU in charge of the hazardous substance, and the activities on the neighbouring property are associated with the activities on the property where the relevant hazardous substance is present.'	The text has been amended to reflect the points made in the submission.
Part 2	10(3)	5	10(3): The definition of 'neighbour' implies that the compliance certifier must verify that the PCBU in charge of the location has an agreement each with the owner, the lessee, the sub-lessee, occupier, and person in possession of the neighbouring property. Please qualify further.	The text has been amended to reflect the points made in the submission.
Part 2	7(2)	2	7(2)(a)(ii): Agree with inclusion of the word 'necessary'.	Noted. No action.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 2	7(2)	5	7(2)(a): It is impracticable for a certifier to obtain 'all relevant information' relating to certification requirements. We may, for instance, see a paper record that training was given to staff and assess that the requirement for training was met. It would take us an impractical amount of time to obtain proof that the signatures of staff on the paper record are in fact those of relevant workers, obtain proof of each worker's actual employment, obtain information on all the contents of the training that was given, and so on. The way the requirement is worded, certifiers are bound to be unable to meet it. Please reword this requirement.	The text of 7(2)(a) has been amended to reflect the requirements of the HS Regulations/points in the submission.
Part 2	7(2)	5	7(2)(a)(ii): The phrase, 'all necessary measurements, calculations and other details', is too broad. Please qualify. In a large workplace with an isolated Class 5 hazardous substance location, for instance, one measurement between the location and the perimeter fence 6m away could be the only measurement that I would need to make if I didn't see any incompatibles or ignition sources around the location. I wouldn't go measure the distance between the location and the nearest ignition source that is more than 200m away – I would have to if we kept the wording of this clause.	The text of 7(2)(a)(ii) has been amended to reflect the requirements of the HS Regulations/points in the submission.
Part 2	7(3)	2	7(3): Agree with inclusion of this.	Noted. No action.
Part 2	7(4)	2	7(4): Records need to address each action/record, but this may not necessarily be within the checklist. As worded it reads as if a checklist must have everything.	It is intended that where checklists are used, these are to have prompts for the points in the performance standard. The record of information does not need to be within the checklist. Clarity has been added to the performance standard.
Part 2	9(2)	2	9(2): This is different to the wording of the HS Regulations. Reg 3(2) refers to substances likely to be present and maximum capacity of containers. Reg 10.26 (establish HSL) refers the quantity that is present (not likely to be present). Similarly for Reg 12.17, 12.34 and 13.34. Situations where quantities are accurately known (and under active management) exist, and would be impacted.	This has been limited to flammable substances to reflect that the container may also contain vapour in the ullage space.
Part 2	9(2)	5	9(2): Should stationary tanks and transportable containers (that is, IBC's and ISO tanks) be explicitly added to the types of containers identified? 9(2): Please clarify that the 'capacity' of stationary tanks and tank wagons is to be used for the purpose of calculating a separation distance, as defined in the Health and Safety at Work (Hazardous Substances – Management of Pre-2006 Stationary Container Systems up to 60,000L) Safe Work Instrument 2017. 9(2): Please clearly state that the separation distance referred to in this clause is the separation distance referred to in Part 11 of the HS Regulations. 9(2)(a): Please define 'gas free.' Could an empty IBC that used to contain hydrogen peroxide be deemed gas free? Should this exception also apply to, say, triple-rinsed containers of a Class 8.2A substance, or open empty tins of a Class 3.1C solvent, or open paint tins with hardened residues of formerly flammable paint?	These have been added in response to the submission. Amendments have been made to clauses 9 and 10 to provide clarity. The clause has been retained as written as the measurement could be a segregation distance, separation distance etc. It is not intended to provide guidance in this performance standard to this level of detail.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 3	11	5	Delete 'all.' A compliance certifier does not have to be satisfied that 'all relevant requirements of the HS Regulations' are met before issuing an LCC.	The text has been amended to better reflect the requirements of the HS Regulations. Intent.
Part 3	11	6	<p>MTA seeks clearer guidelines on the timeliness of issuing location compliance certification. Some MTA members have reported excessive delays in issuing certification after receiving verbal confirmation from certifiers that any existing issues had been resolved. In some cases, these delays have led to loss of business earnings where certification was required to be supplied to a third party in order to supply product for sale at the service station.</p> <p>MTA believes more specific time frames should be set for the issue of certification after completion of all assessments. The current standard of as soon 'as reasonably practical' is not sufficient. MTA suggests a timeframe of no more than three working days be set for this performance criteria.</p> <p>In addition to this (and to adequately manage expectations), MTA submits that WorkSafe should allow the issue of an interim certification. This would match the process used for hazardous equipment subject to the PECPR Regulations, where inspection bodies can issue manually prepared interim certification if issuing full certification within a certain period might be an issue.</p>	<p>The timeframe of issuing location compliance certificates is further addressed in the Health and Safety (Hazardous Substances - Information and Process Requirements for Compliance Certifiers) Performance Standard and these are not reiterated here.</p> <p>WorkSafe will continue to emphasise the client needs.</p> <p>The requirements of location compliance certificates are prescribed in the HS Regulations and do not include an interim certificate. Hence interim certificates have not been included in this performance standard.</p>
Part 3	12	2	Needs rewording - conflates consideration of whether locations are separate HSL (adversely affect each other) with recording on separate LCC. Is it trying to say if there are HSL that may adversely affect each other then they must be on the same certificate.	Clause 12 has been rewritten to be specific about establishing multiple hazardous substance locations.
Part 3	13	5	After Clause 13: Please provide record-keeping requirements when issuing a certificate in accordance with HS Regulation 6.23(3)(a).	Reg 6.23(3)(a) is applicable across all certificate types. The record keeping requirements are therefore more appropriately addressed in the Information and process requirements performance standard. It is intended to hold this submission for a future amendment to that performance standard.
Part 3	13(2)	2	13(2): What is meant by a relevant requirement? Is for example the requirement in 10.34(1)(g) one requirement. Agree with the provision that if four or more - the certifier must consider refusing (and by implication document why if they do not refuse).	This clause has been reworded to simplify.
Part 3	13(2)	3	13(2): '...four or more minor failures...'. If one is considering to Refuse to issue a Conditional Certificate, then one is actually refusing to issue any form of Certificate?! Ipso facto: it is a refusal . If there are one to three minor failures then the clause implies that these can be listed on the Conditional Certificate. Is this the correct intention, and if so could that be worded accordingly? Potentially some guidance notes on what definitively is meant by minor since this does open up the interpretation option which of course we trying desperately to avoid. The logic also leans to having a list of 'Non-Minor' which immediately triggers a Refusal. Clarity and uniformity of assessment being the key point.	<p>The fact that it is a refusal is clarified.</p> <p>The requirement to list the failures is specified in clause 18.</p> <p>It Is not intended to develop a list of minor non-compliances as part of the performance standard as these could be numerous.</p>

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 3	13(3)	2	13(3): Needs rewording. What is meant by this, is it supposed to be if it will take to long to comply then don't (can't) issue a certificate. The phrase 'after the date of the issue of the conditional compliance certificate' implies a cert has been issued.	Sub clauses (2), (3) and (4) have been redrafted to reflect the HS Regulations.
Part 3	13(5)	3	13(5): Update the Register for completion of a Conditional Item(s).... This appears to be a duplication of Section 18(2).	Clause 18(2) has been deleted.
Part 3	13(6)	2	13(6): Do not agree with this, it adds an unnecessary additional burden. The PCBU has a certificate that is very clear about the status of their compliance, and there is a register that WorkSafe can interrogate to determine those certificates that have lapsed. Certifiers are not refusing to issue a certificate in this case.	Clause 13(6) has been deleted.
Part 3	13(6)	3	13(6): The original intent on preparation of the HS Regulations and the instruction given to Certifiers was: Once a Conditional Certificate has been issued, the obligation of the Certifier ends and the matter falls to the Inspectorate to monitor failures to meet the Conditions. Notwithstanding this, should a PCBU notify a Certifier of completing a Condition, then the Certifier would then update the Register under (5) or 18(2). The inclusion of a responsibility or obligation on the Certifier to provide a full administrative monitoring and notification to WorkSafe of the status of Conditional Certificates is extremely onerous and exceeds the original intent of the HS Regulation. This clause should be removed.	Clause 13(6) has been deleted.
Part 3	14(3)	2	14(3): In the case of several (say) 90kg installations that would impact on each other then the same HSL then they would be included. If would not impact on each other then they would not be on the certificate - this information needs to be communicated clearly to LPG suppliers. Include this as an example in the Performance Standard.	Clause 12(2) has been added to clarify.
Part 3	14(4)	2	14(4): At present we use the statement '..HS Regulation 9.26, 10.34, 10.36, 12.17, 12.42 or 13.38..' as is outputted by the Register. Update the register to conform with the performance standard.	This clause has been reworded to reflect the WorkSafe certificates register system.
Part 3	14(6)	2	14(6)(a): Again not specifically in the HS Regulations (see 9(2) above). 14(6)(b) and (c): Contradictory. What situations would be bulk but not stationary tank (or vice versa).	This clause has been reworded in order to simplify and to reflect the intent of the HS Regulations.
Part 3	14(6)	5	14(6)(b) and (c): Could be referring to the same thing (that is, a 10,000-litre stationary tank of sodium hydroxide 'holds a hazardous substance in bulk' and 'in a stationary tank'). It might be better to calculate the maximum based on the 'capacity' of the container, as defined in the Health and Safety at Work (Hazardous Substances - Management of Pre-2006 Stationary Container Systems up to 60,000 L) Safe Work Instrument 2017.	This clause has been reworded in order to simplify and to reflect the intent of the HS Regulations. The term capacity has been elaborated.
Part 3	15(1)	2	15(1): As for 14(4), also conditional certificates should refer to Reg 6.24. 15(1): Typo in first example (includes reference to conditional certificate wording).	Reference to 6.24 for conditional certificate included. Reference to conditional requirement deleted.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
			15(1)(d): What if no street number (also typographical error from previous example). 15(1)(f): Why NZBN and company number, and why the need to have either on the certificate?	Alternative to a street address included. Typographical errors corrected. These are required for identification purposes and are prescribed in HS Regulation 6.26.
Part 3	15(1)	5	15(1)(b): The sample texts for full and conditional certificates after Clause 15(1)(b) are identical, but perhaps shouldn't be (that is., 'with exception of requirement specified below...'). 15(1)(c): Please allow us to number our certificates in accordance with our filing system, as long as it is trackable. Our certificates already link to the certifier's authorisation number through the unique certificate number and the certifier's authorisation number under the signature.	The text has been amended. The text has been amended to refer to the requirements of the Health and Safety at Work (Hazardous Substances - Information and Process Requirements for Compliance Certifiers) Performance Standard.
Part 3	17(1)	2	17(1): Agree with having 'may' as the wording.	Noted. No action.
Part 3	18(1)	2	18(1): Clarify intent. Intent is to say what is not compliant rather than what they need to do?	Required action has been included.
Part 3	18(2)	2	18(2): 15 days are available in 6.24 after issuing certificate, there needs to be a similar time frame for entering the updated compliance status in the register. Information relating to the relevant requirement being met may be received outside of working hours on the last day, or when the certifier is unavailable for a period of days.	15 working days has been added into the performance standard, which reflects the certificates register system.
Part 3	19	2	Reword to allow renewal the following year when a new inspection has been undertaken.	Included.
Part 3	20	2	Include 'in accordance with clause 17'.	Additional text added to include amending the expiry date in accordance with an extended renewal period.
Part 3	21(1)	2	21(1)(b)(i): Does this imply that the dates would be the same as the initial certificate? Issue and comes into force new/expiry date as original? This would be particularly useful if had assessed on site an alternative location, and change scope of certificate without a revisit, or if the change in quantity does change the requirements.	21(1)(b)(i) amended by deleting the word 'only'. The certifier is able to issue a new certificate and decide on the expiry date.
Part 3	22(1)	5	22(1)(c): Replace 'meets all relevant requirements' with, 'meets the requirements relevant to the regulation that the hazardous substance location is being certified to.'	Text amended in accordance with the submission.
Part 3	Subpart 1	4	With under 300L of HAZD, but with varying different products that are class 3 and class 8, it may be difficult to have a different compliance certificate for each product as so many different products.	Opportunity is provided for the compliance certificate to be issued on the basis of hazard classes, thereby avoiding the need to have a compliance certificate for each product.
Part 3	Subpart 2	6	Information to be recorded in location compliance certificate MTA supports the inclusion of examples in this SWI to provide practical guidance on how certain criteria should be assessed.	Noted.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Part 3	Subpart 3	6	<p>Reviewing, varying and changing scope of location compliance certificate</p> <p>MTA would support the inclusion of examples to highlight what typical scope change request might be, or might have been requested previously in order to provide consistency of interpretation for compliance certifiers.</p>	Clause 21(2) provides circumstances of scope changes. It is not intended to further elaborate.
Part 3	Subpart 4	4	Inventory can be fluid due sales, daily use etc. For businesses under 300kg or litres, that are showrooms or service providers such as salons, inventory should maybe only have to be done quarterly or six monthly to ensure limits are not exceeded.	The performance standard utilises the inventory of the PCBU but it is left to the compliance certifier to determine the basis of the inventory. Hence there is flexibility.
Sched 1		6	<p>Process and information requirements applying to certification of hazardous substance locations generally</p> <p>While MTA supports the rigor applied to ensuring compliance certifiers carry out their duties correctly, we question the level of detail required to verify compliance around retaining records. MTA are mindful of the potential to increase costs where such detailed records are required to be retained. We submit that, if this level of detail is required, the regulator carries out appropriate levels of audit on these records to ensure certifier compliance.</p> <p>MTA questions the need for the compliance certifier to take photos of signs and retain them as described in table 1.4. It could be difficult to accurately identify the photo.</p> <p>It is also unclear whether the requirements are to retain a hard copy of the photo of the sign or just an electronic copy.</p> <p>These and other requirements do have the potential to add unnecessary costs to the verification process by requiring compliance certifiers to purchase camera equipment, possibly printing equipment, and provide extra physical and electronic storage facilities.</p> <p>Following enquiries made to FENZ, MTA is concerned that FENZ is not adequately resourced to review large numbers of emergency response plans. As such, requiring a compliance certifier to verify that FENZ have been given the opportunity to review the ERP may be problematic.</p>	<p>The records are required for several purposes – specifically for the certifier to be able to justify the issuing if a certificate and for the auditing of the compliance certifier, which is required at least 4-yearly.</p> <p>The photos of signage provide a confirmatory record. The requirement is also to include landscape details to confirm the location.</p> <p>Records may be hard copy and/or electronic.</p> <p>The records that are specified are required to be sighted by the compliance certifier to be assured the prescribed requirement is met. The recording of these is simplified as much as possible, for example, by taking photographs.</p> <p>This requirement is a reflection of the prescribed requirement in the HS Regulations which requires FENZ to have been given the opportunity to comment (as opposed to verifying FENZ responses).</p>
Sched 1	Table 1.1	2	<p>If classifications should be recorded by the certifier, then the inventory should have to include them as well.</p> <p>Are all classes meant, or just the classes relevant to thresholds relating to certification (for example, whether a flammable liquid is 6.3 is not relevant to LCC).</p>	Inventory requirements are not able to be specified by the performance standard and are therefore not included. Clarification made re classification relevant to thresholds.

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Sched 1	Table 1.1	2	Check all the regulations listed, what is the relevance if 11.8 for example.	This table has been reviewed and a different approach has been taken. Instead of listing all of the certification requirements in the HS Regulations which have a threshold, only the compliance certificate thresholds are listed in this table. Where thresholds are prescribed for items that are required to be certified, these are inserted as a requirement in the Schedules if the thresholds are greater than the certification thresholds.
Sched 1	Table 1.1	5	Please include 10.30, 12.13, 12.38, and 13.30. Column 3: Please replace 'where applicable' with 'in relation to items 4, 8, 9, 10, 11 and 12' to clearly prevent the application of HS Regulation 10 to requirements that it doesn't apply to. HS Regulation 10 clearly limits the application of the quantity-ratio sum approach to the determination of 'whether the requirement for a hazardous substance location or a compliance certificate is activated.' alternatively (and I think this is the more logical solution), make HS Regulation 10 applicable to items 1 to 3, items 5 to 7, and HS Regulations 10.30, 12.13, 12.38 and 13.30.	This table has been reviewed and a different approach has been taken. Instead of listing all of the certification requirements in the HS Regulations which have a threshold, only the compliance certificate thresholds are listed in this table. Where thresholds are prescribed for items that are required to be certified, these are inserted as a requirement in the Schedules if the thresholds are greater than the certification thresholds.
Sched 1	Table 1.2	2	What if the notification is done after the inspection? Does a HSL actually exist if it hasn't been notified? What does commissioning mean for existing locations. 1.2(d): The notification form doesn't ask for this/a previous certificate wouldn't have this information.	Table 1.2 has been amended to only require verification of the notification. Item (d) has been deleted.
Sched 1	Table 1.3	1	Briefly, my main concerns are that there is too much risk to Certifiers as there is too much for us to be able to effectively verify. Schedule 1, table 1.3 requires Certifiers to verify that there is an appropriate period of training under supervision. This is a very subjective matter and I believe that only the PCBU is able to adequately and effectively make this call for each of their employees. Different individuals have different capacities to learn. There is also a requirement for us to verify that the requirements for instruction and training provided to workers are met. We visit a very wide variety of industries and work situations which can have very complex and unusual substances, processes and procedures. I put it to you that your enforcement officers would not like to be responsible for approving and signing off the training and supervision for the sites they visit, and I consider it very unfair to place this responsibility onto certifiers and I feel that this responsibility should sit with the PCBU. I feel that the wording of the Performance Standard is not consistent with HS Regulation 10.31(1)(c) which requires the Certifier to ensure that the PCBU demonstrates to the Certifier that any worker who handles a class 2 or 3 substance has received training as per HS Regulation 4.5. I feel that this wording places an adequate level of scrutiny on the Certifier with the greater responsibility on the PCBU, as it should be.	This is prescribed by the HS Regulation so it is reflected in the performance standard. Notwithstanding this: 1. the activity of the compliance certifier has been made more definitive, 2. the information required as a record has been made more definitive, and 3. the table has been reviewed after further reassessing the regulatory requirements.

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			<p>Other classes require written procedures for handling to be checked by the Certifier and this is already clearly covered, and Certifiers can ensure that workers have access to these documents. Generally speaking, this is my only real concern with the document.</p> <p>I have reviewed the document and compared it against our current audit tools and policies and practices at Envirohaz and we will need to make a few alterations to tidy up a few matters but nothing that we can't handle reasonably comfortably.</p>	Noted.
Sched 1	Table 1.3	1	<p>Thank you for the opportunity to comment, I really appreciate it.</p> <p>I think you are going too far with the burden of verification being placed upon the certifier.</p> <p>I see the fundamental requirement upon the certifier as requiring the PCBU to demonstrate that any worker has received information, training and instruction. I believe that the burden of ensuring (or verifying) that the required information, training and instruction meets the requirement of HS Regulation 4.5 must sit with the PCBU.</p> <p>The detail of complying with HS Regulation 4.5 can be extremely onerous for some sites where they deal with complex situations. HS Regulation 4.5(3)(d) talks about an appropriate period of practical experience. I believe that only a PCBU can determine this as there are so many variables involved in this.</p> <p>It is a confirmed fact that many employees are being harmed by exposure to chemicals in New Zealand. I believe that it is inevitable that a court case will be taken which will assert that training was inadequate and that if the Compliance Location Certification Performance Standard requires certifiers to verify every aspect of HS Regulation 4.5 via HS Regulation 10.34 then certifiers are exposed to an unacceptable risk of litigation.</p> <p>I strongly believe that the certifier should only be expected to verify that the PCBU has demonstrated... anything beyond that is placing too much exposure to liability upon the certifiers.</p>	The actions and records in the performance standard have been simplified to reflect the prescribed requirements.
Sched 1	Table 1.3	2	<p>This needs to be in relation to relevant workers for the HSL (for example, excludes admin, excludes hazardous substance operations not at the HSL).</p> <p>This is asking for a lot of information from the certifier. If WorkSafe want certifiers to check all this then WorkSafe need to provide better education and resources to industry. The current training records quick guide is inadequate (doesn't cover all the required matters).</p> <p>1.3-3(b): Remove this – very onerous on certifier.</p> <p>1.3-3(c): What is this intended to mean?</p> <p>1.3-5: Do we need records for all relevant workers, or is an example of one and a list of names sufficient. A sample is OK for 6, but not 5?</p>	<p>The limitation that the extent is limited to persons at the HSL has been included to ensure clarity.</p> <p>The actions and records in the performance standard have been simplified to reflect the prescribed requirements. The records specified are typical records necessary to verify the requirements specified in the HS Regulations.</p> <p>This includes any certificates or letters of confirmation given to the workers.</p> <p>Clarified to mean samples or a reference to the instructions or training.</p>

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Sched 1	Table 1.5	2	This should relate to extinguishers relevant to the HSL. 1(c) all extinguishers relevant to the HSL should be checked. Clarification around security/access provisions for extinguishers that would otherwise be in publicly accessible areas.	Clarity in relation to the hazardous substance location has been added. Clarity around security/access is outside the scope of the performance standard.
Sched 1	Table 1.6	2	1.6-10: PCBU only has to consider FENZ, not necessarily give effect to all of them (although we would ask why of not).	The performance standard has been amended accordingly.
Sched 1	Table 1.6	5	Column 4, item (a): Should read 'the reported maximum quantities of each sub-classification...' Item 1: 'All reasonably foreseeable emergencies' is too broad. Limit action for Item 1. For instance, if we're assessing a Class 3.1 location, we need not verify their emergency provisions that apply to general work including manual handling, sharp edges, theft, acts of terrorism etc. Column 4: Does 'a reference to it' include a tickbox on our checklist? Item 7: Add 'if applicable' after '12 months'. Item 7: Does failure to implement the ERP (for example, workers performed actions other than what is described in the ERP) constitute a major non-compliance? Item 8: Limit to equipment, materials and people relevant only to the hazardous substance location being assessed. Item 10: Replace the action with, 'If FENZ requested to review the ERP, verify that the PCBU provided FENZ a copy of the ERP. If FENZ made a recommendation to the PCBU, verify that the PCBU amended the ERP to give effect to the FENZ recommendation.' Based on HS Regulation 5.11, it is not the PCBU's duty to invite FENZ.	The text has been amended to reflect the HS Regulations. The text has been amended to better reflect the intent. This means a note specifying the specific copy of the ERP Note added. A determination of whether it is a major or minor failure can be dependent upon the situation. It is outside the scope of the performance standard. Each section of the schedules has had an insertion to clarify that they only apply to HS Locations. The text has been amended in accordance with another submission. Reg 5.10 requires the PCBU to make a copy of the ERP available to FENZ if they are a response party in the ERP.
Sched 1	Table 1.8	2	This is adding in more stringent requirements, partially expanding on the requirements of Reg 3(b). Elevation drawings are not always relevant.	Table 1.8 amended to only require elevation drawings where relevant.
Sched 1	Table 1.8	5	Item 1: How are we expected to demonstrate a site plan is 'uniquely identifiable'? Item 2: Specify that 'separation distances' refer only to distance from protected or public places in relation to Class 6 or 8 substances, excluding separation distances for Classes 2, 3, 4 and 5.	The text has been amended to better reflect the intent. The text has been amended to better reflect the intents.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Sched 2		6	<p>Comment on Schedule 2:</p> <p>Requirements specific to class 2.1 and 3.1 substances</p> <p>MTA questions the level of detailed verification required of a compliance certifier, particularly when the certifier is making these assessments based on the collection of information made by a competent person working under their supervision. This places a heavy reliance on the ability of the competent person to collect all appropriate information.</p>	The verification actions specified in the various tables reflect the requirements of the HS Regulations.
Sched 2	8	5	How far apart must two LPG tanks be so that their capacities do not have to be combined for the purpose of calculating the separation distance from protected or public places? How far apart must two LPG tanks be so that they could be deemed two separate hazardous substance locations?	Guidance of this nature is outside the scope of the performance standard.
Sched 2	3(2)	5	3(2)(b): Implies the compliance certifier must make a hazardous area site plan.	The compliance certifier must make records of his/her verification of the hazardous areas - not make a hazardous area plan.
Sched 2	7	5	<p>If AS/NZS 1596 is not to be recognised as a standard (as declared by WorkSafe in the last LPG workshop in Wellington), what are the minimum distances between the filling station and a nearby: cylinder store; above ground tank; belowground tank turret; or, remote tank transfer point, without having to aggregate their maximum capacities with the maximum capacity of the filling station?</p> <p>Must an acetylene filling station be assessed in accordance with HS Regulation 11.22? If so, how far must a Class 3 store associated with the filling be located from the filling station?</p>	Guidance of this nature is outside the scope of the performance standard.
Sched 2	Table 2.11	2	Include record of the type of transfer point.	Included.
Sched 2	Table 2.3	2	Records 3(c). What is this (nameplate) referring to?	The nameplate has been clarified.
Sched 2	Table 2.3	3	<p>Comment on Schedule 2:</p> <p>Item 3 (b) Verify documentation relevant to equipment such as forklifts operating in the area.</p> <p>HS Regulation 10.26(4)(c) references Standards applicable to Fixed Electrical Equipment. Having a Certifier check mobile equipment when there are no standards is going to be very problematic. We are not Vehicle inspectors. Whilst the PCBU still has a duty to manage the area in order to prevent unintended ignition, this management process which is largely procedural should not be placed on a Certifier for inspection of mobile pieces of equipment.</p> <p>This clause should be removed.</p>	Noted, however 20.26(4)(c) requires the certifier to verify that the hazardous area is established and maintained.
Sched 2	Table 2.9	2	Records, is 'tags of building elements' referring primarily to doors, or are other elements expected to have tags. Consider the wording used in, for example, Table 2.12 Item 2.	Table has been reworded.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Sched 3		6	Comment on Schedule 3: Requirements specific to class 3.2 and 4 substances Same general comments as those made on schedule 2.	The verification actions specified in the various tables reflect the actions required by the HS Regulations.
Sched 3	Table 3.4	2	Item 3: the Action refers to verifying that the hazardous substance location is secured, Records refers to means by which the substances are secured. There is a subtle difference between these.	Noted.
Sched 4		6	Comment on Schedule 4: Requirements specific to class 5.1.1 and 5.1.2 substances Same general comments as those made on schedule 2.	The verification actions specified in the various tables are the actions required by the HS Regulations. They therefore need to be reflected in the performance standard.
Sched 4	Table 4.1	2	Item 1: (same as Table 3.4 Item 3).	Noted.
Sched 4	Table 4.3	5	Item 4: Does 'place of regular habitation' have the same definition as that of an area of regular habitation in HS Regulation 3? Item 4: Does 'person' exclude a worker that is working with the hazardous substance at the hazardous substance location?	The purpose of this performance standard is to specify information and process requirements. It is not intended for the performance standard to provide guidance on the HS Regulations.
Sched 4	Table 4.5	2	Item 1: This is another area where increased PCBU education is required as well. Make clear that for the purposes of LCC we are certifying for matters/PPE at the HSL, and not necessarily where it may be used elsewhere on site.	Clarified that the action relates to the HSL.
Sched 5		6	Comment on Schedule 5: Requirements specific to class 5.2 substances Same general comments as those made on schedule 2.	The verification actions specified in the various tables are the actions required by the HS Regulations. They therefore need to be reflected in the performance standard.
Sched 5	Table 5.2	2	Item 1: Control temperatures and actual temperature to be recorded if applicable. If there is no control temperature (that is, the temperature is not to exceed 50°C), then a note about the observations of the situation. Items 3, 4, and 5: Improve formatting to make clear the records required. Comment as for Table 4.5: Item 1.	Additional text added. Records added. Additional text added.
Sched 5	Table 5.4	5	Does a place of regular habitation have the same definition as that of an area of regular habitation in HS Regulation 3? Does 'person' exclude a worker that is working with the hazardous substance at the hazardous substance location?	It is not intended for the performance standard to provide guidance on the terms in the HS Regulations as guidance is outside the scope of a performance standard.

PART	CLAUSE	SUBMITTER	SUBMISSION	DECISION
Sched 6		6	Comment on Schedule 6: Requirements specific to classes 6.1A, 6.1B, 6.1C, 8.2A, and 8.2B substances Same general comments as those made on schedule 2.	The verification actions specified in the various tables are the actions required by the HS Regulations. They therefore need to be reflected in the performance standard.
Sched 6	2	5	Must a stationary tank with a vent pipe be deemed open or closed?	This is guidance which is outside the scope of the performance standard.
Sched 6	Table 6.2	2	Item 1: What are the separation distances to be used if say a mix of 6.1B and 6.1C present?	This is guidance which is outside the scope of the performance standard.
Sched 6	Table 6.3	2	HS Regulation 13.29 explicitly states that for the purposes of the HS Regulation Schedule 15 defines incompatibilities. Adding review of SDS for other chemical reactivities is above and beyond the scope of the certification requirements.	Performance standard amended in accordance with the regulatory requirements.
Sched 6	Table 6.4	2	6.4(2)(a and b): There is no requirements in the HS Regulations for the eyewash and safety shower to meet a particular standard for design testing and maintenance. While this is good practice it is above and beyond, there is no definition that aligns the equipment with any specific standard.	The purpose of this performance standard is to specify information and process requirements. The specification of standards for testing and maintenance of eye wash showers is outside its scope.
Sched 6	Table 6.8	2	Clarify the facilities specified are those specified in a SWI.	Relevant text added.

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