

November 2017

Changes to hazardous substances regulations

The new Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations) bring together the requirements for workplaces that work with hazardous substances into a single place. These new Regulations sit under the Health and Safety at Work Act (HSWA).

Most requirements transfer directly from the previous regulations under the Hazardous Substances and New Organisms (HSNO) Act and stay the same, but there are some changes. This summary is an overview of the major changes. For more detail, see WorkSafe's interpretive guide *Changes to the Regulations for Hazardous Substances in the Workplace*.

The Environmental Protection Authority (EPA) continues to approve substances. It also sets requirements for manufacturers and importers to ensure hazardous substances have the correct labels, safety data sheets (SDS) and packaging; disposal rules and rules to protect the environment from hazardous substances.

The EPA will have a new enforcement role, making sure substances are approved, have the right label, SDS and packaging, and comply with the limits on hazardous substances in some products. WorkSafe will continue enforcing HSNO ecotoxic and disposal controls in workplaces and the requirements for hazardous substances in the new Regulations.

This guide is written for persons conducting a business or undertaking (PCBUs) who use, handle, manufacture and store hazardous substances. In this guide, 'you' means the PCBU. In simple terms, a PCBU is an individual or company carrying on a business, but it can also be other types of organisation. More information on PCBUs and other duty holders in the workplace and their duties is available on our website: www.worksafe.govt.nz

This guide does not list all the changes to every **control** or **requirement** (what you have to do in your workplace according to the Regulations) or **threshold** (the amount of a substance that activates a requirement) for every hazardous substance in your workplace. The focus is on major changes that affect many PCBUs.

For more information on requirements for specific workplaces and substances, see the guidance on WorkSafe's website. You can search for a substance on the EPA *Approved Hazardous Substances with Controls* database to see all the controls that apply to it. This database is available at www.epa.govt.nz

You can also enter the substances in your workplace into the *Hazardous Substances Calculator* (the Calculator) (available at: www.hazardoussubstances.govt.nz) to find the key controls for your substances. You can also use the Calculator to prepare a compliant inventory.

In this guide, if you see the calculator icon next to the control that is being discussed, it means that you can use the Calculator to determine if your site requires the control.



Hazardous waste

Some requirements for hazardous waste commence on different dates.

Some requirements apply from 1 December 2017:

- the rules for labelling containers for hazardous waste in the workplace
- the requirement to include hazardous waste in your inventory.

The duty to provide additional information, training and instruction about using, handling, manufacturing and storing hazardous substances, including hazardous waste applies from 1 June 2018. However, you also have a general duty to provide training under HSWA.

The Regulations apply to the use, handling and storage of hazardous waste from 1 June 2019.

Risk management

You have a duty to manage the risks associated with the hazardous substances in your workplace.

Consider whether you need hazardous substances in your workplace. If you can, eliminate hazardous substances from your workplace. Then, consider whether you can substitute any that remain for less hazardous ones.

Then, make an inventory of your substances to know what you have in your workplace and the requirements you need to put in place. These requirements are found in the Regulations, and the key ones are included in the Calculator. They specify where and how you must store substances, who can handle them, measures to manage the risks associated with them, and other ways to keep workers and others safe.

However, even with these requirements in place, your hazardous substances may still present risks to workers and others. You must manage these remaining risks using the risk management process known as the hierarchy of controls and considering specific aspects of your substances such as:

- the amount you have in your workplace and the specific hazards (ie are they flammable or toxic) and their possible reactions with other substances
- any ignition sources in the workplace and the structures, plant or systems that you use when handling or storing the substances
- what workers do with the substance, the risk of workers being exposed to the substances and how serious that exposure could be
- any specific controls for working with the substances, such as prescribed exposure standards and restricted entry intervals.

Remember to ask your workers and their representatives for their views when identifying risk and making decisions about the ways to eliminate or minimise risk. They may be able to suggest practical cost-effective solutions, or identify the pros and cons of different options.

WorkSafe's *Guide to Hazardous Substance Risk Management* provides more details on how you can manage risk in your workplace and explains how to apply the hierarchy of controls in detail.

Inventory



A key new requirement in the Regulations is to keep an inventory of the hazardous substances you use, handle, manufacture or store at your workplace.

For each substance in your inventory you must include:

- the product or chemical name and UN number, if available
- the maximum quantity likely to be at the workplace
- the location of the substance
- any specific storage or segregation requirements
- a current safety data sheet (SDS) or condensed version of the key information from it (eg a product safety card).

Your inventory must also include any hazardous waste in your workplace and:

- describe the hazards of the waste as closely as possible (eg flammable waste, corrosive waste, chlorinated solvent waste)
- list the maximum quantity of the waste likely to be at the workplace
- the location of the waste
- any specific storage or segregation requirements.

The inventory **must** be readily accessible to any emergency service worker attending your workplace during an emergency and after the workplace has been evacuated. A compliance certifier or inspector may also ask to see your inventory.

You do not need to keep an inventory:

- for a transit depot (or designated transfer zone), but you **must** be able to provide the product or chemical name and quantity of each hazardous substance at the depot or transfer zone to an emergency service worker if they ask for it
- for consumer products used in quantities similar to household use that are kept in their containers
- if you are a laboratory using hazardous substances in research and development, analytical testing or teaching (although in this case you do need to keep a record of tracked substances or unapproved substances that are likely to be hazardous substances).

WorkSafe's *Guide to Inventory Requirements for Hazardous Substances* provides more details. For a step-by-step guide to preparing an inventory, use the *Workbook* or enter your substances into the Calculator. Both are available from the Hazardous Substances Toolbox: www.hazardoussubstances.govt.nz

Safety data sheets



You must get an SDS for all hazardous substances from the manufacturer or supplier when they supply a substance to you:

- for the very first time
- for the first time in the last five years
- for the first time after a change in the SDS.

The SDS or a condensed version of its key information such as a product safety card must be readily accessible (ie easy to find) to workers and to emergency service workers who could be exposed to the substance at your workplace.

You don't need an SDS for substances in transit, consumer products that you intend to supply or sell to other people and will not open in the workplace, or for consumer products that you use in your workplace as you would at home.

Even when you don't need an SDS, you still need to make sure your workers have information about how to safely handle, use and store these substances. You could do this using a product safety card.

WorkSafe's *Guide to Safety Data Sheets in the Workplace* provides more details and specific examples.

Labelling

There are new requirements for labelling containers of the following substances in the workplace:

- hazardous substances manufactured and used on site (eg blended or mixed in a vat)
- hazardous substances that have been decanted or transferred at the workplace
- hazardous waste.

You must also make sure (so far as is reasonably practicable) that the manufacturer or importer label remains on the containers of hazardous substances supplied to your workplace, and that the label continues to be legible.

WorkSafe's Guide to Labelling, Decanting and Repackaging Hazardous Substances in the Workplace provides more details and specific examples.



Information, training and instruction

You must make sure your workers have and understand the information, training and instruction they need to do their work safely.

Workers need information about:

- any work happening in their work area involving hazardous substances
- where to find information about the hazards of each hazardous substance in the workplace and how to handle and store those substances safely. This includes the SDS but is not limited to the SDS.

The training and instruction needs to include:

- the physicochemical and health hazards of the substances (ie are they explosive, flammable, corrosive, toxic or oxidising)
- how to safely use, handle, store and dispose of the substances
- how to use plant (in other words equipment) necessary to manage the hazardous substances safely, including personal protective equipment (PPE)
- any other duties the worker might have under the Regulations
- the worker's role in an emergency involving the hazardous substances.

Workers need to have an induction and supervised experience in your workplace, even if they have received training and instruction at another workplace.

You must keep a record of training and instruction and make sure it's available for inspection by inspectors or compliance certifiers.

WorkSafe's Guide to Information, Training and Instruction for Workers Handling Hazardous Substances provides more details and practical ways to meet this requirement.



Emergency management

Emergency response plans need to cover all reasonably foreseeable emergencies (this means any emergency that has a realistic chance of happening) arising from a breach or failure of the controls on the hazardous substances in (or likely to be in) the workplace.

In addition to information about how to prepare for, respond to and control different emergencies in the workplace, under the Regulations emergency response plans need to include several additional items:

- any special training that any person who has responsibilities in the plan needs to have
- an inventory of the hazardous substances in the workplace
- a site plan showing all hazardous substance locations (HSLs) in the workplace.

Fire and Emergency New Zealand can review your plan to check whether it is achievable for them and reflects their operational policies. If they make a recommendation about your plan, you must follow it so far as is reasonably practicable.



For fire extinguishers, the Regulations now specify a minimum rating of 30B, and that they must be clearly visible and readily accessible.

Clearly visible could mean displaying an easy-to-see sign to show where fire extinguishers are located. Readily accessible could mean placing fire extinguishers along normal thoroughfares in your workplace, near exits, or near (but at a safe distance from) a specific hazard.

WorkSafe's *Emergency Response Flipchart* is a template of how to prepare an emergency response plan, and is available at: www.hazardoussubstances.govt.nz

Certified handlers



Certified handlers replace approved handlers, and are required for a smaller group of substances:

- acutely toxic (class 6.1A and 6.1B) substances
- substances requiring a controlled substance licence, such as most explosives, fumigants and vertebrate toxic agents.

Approved handlers are no longer required for substances from classes 2 to 5, 6.1C, 6.7A and 8.2A. For these substances, the approved handler requirement has been replaced by information, instruction and training requirements and keeping substances appropriately secured from access by persons other than those you (as PCBU) allow to access them.

People using class 9 (ecotoxic) substances are also not required to be certified handlers under the Regulations. However the EPA Hazardous Property Controls (HPC) Notice requires people applying certain highly hazardous pesticides to be appropriately qualified to ensure the environment is protected. For more information about these qualifications, see the HPC Notice on the EPA website: www.epa.govt.nz

WorkSafe's *Guide to Certified Handler Requirements* provides more details on the change to handler requirements.

Hazardous substance locations and transit depots

If you hold some hazardous substances above a threshold quantity for longer than a specified time, you need to hold them either in an HSL or transit depot.

For non-tracked substances over the threshold quantity this time is now 24 hours, not 18 hours. The time remains at two hours for tracked substances.

There is a new sign for transit depots. For more information see *WorkSafe's Guide to Hazardous Substance Signage*.

Storage requirements for toxic and corrosive substances

There are new requirements to establish an HSL for class 6.1A, 6.1B, 6.1C, 8.2A and 8.2B substances. All HSLs for solid or liquid class 6 or 8 substances require a location compliance certificate.

There are also new storage, separation and segregation requirements for class 6.1A, 6.1B, 6.1C, 8.2A and 8.2B substances:

- in HSLs
- below the threshold for establishing an HSL
- at farms.

Because there are many new requirements for class 6 & 8 substances, you should consult *WorkSafe's Guide to Storing Class 6 & 8 Hazardous Substances* for more information.

Tracking

Tracking requirements continue for highly hazardous substances in the new regulations. The following substance classes are no longer tracked: 6.1C, 9.1A, 9.2A, 9.3A, 9.4A.



However, under the EPA HPC Notice, suppliers must not sell certain highly hazardous substances (including 6.1C substances) to the general public and must keep records of who they sell these substances to. For more information about these requirements, see the HPC Notice on the EPA website: www.epa.govt.nz

The competent person replaces the approved handler for tracking requirements, and is a certified handler or, if the substance does not require a certified handler, a worker who has received the information, training and instruction required to handle the hazardous substances. A competent person needs to take responsibility for tracked substances when they are transferred to a workplace.

Gases under pressure (cylinder testing)

Test stations (rather than individual periodic testers) will now issue documents of certification (formerly periodic test certificates) or test reports for cylinders.

There are also minor changes in design specifications and equipment approvals. WorkSafe's guidance on cylinders and testing provides more detail.

Compliance certificates

Test certifiers and certificates become compliance certifiers and compliance certificates.

There are changes in what certifiers check before they issue a compliance certificate, especially for HSLs. For example, a certifier may check new requirements such as training. The certifier may also check how you secure substances that no longer have certified handler requirements.

See WorkSafe's guidance for more information on other changes to compliance requirements.

Further information

This guide is an overview of only a few key changes to the Regulations for hazardous substances, not every change or every requirement.

See WorkSafe's interpretive guide *Changes to the Regulations for Hazardous Substances in the Workplace* for a more complete overview, including how the transition will work, when the requirements will start to apply, and details on substance classes and types of containment.

For detailed guidance on how all the controls for hazardous substances work together in a workplace, see *Your Practical Guide to working safely with hazardous substances*.

To find out the key controls that apply to your substances and the quantities in your workplace, enter the substances in your inventory into the *Hazardous Substances Calculator* at www.hazardoussubstances.govt.nz

You can search for your substances on the EPA's *Approved Hazardous Substances with Controls* database to find all the controls that apply to them. You can find the database at www.epa.govt.nz