



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021	Date to be published	1 December 2021

List of documents that have been proactively released

Date	Title	Author
11 November 2021	Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021	Office of the Minister for Workplace Relations and Safety
11 November 2021	LEG-21-MIN-0186 Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021	Cabinet Office

Information redacted

NO

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In confidence

Office of the Minister for Workplace Relations and Safety
Cabinet Legislation Committee

Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021

Proposal

- 1 This paper seeks authorisation to submit the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021 (the Amendment Regulations) to the Executive Council.
- 2 These regulations implement policy decisions agreed to by Cabinet in March 2020 in the Cabinet Paper *Refrigeration, Heating and Air Conditioning Technicians: Proposed Regulatory Amendments* [DEV-20-MIN-0050 refers].

Policy

- 3 The Amendment Regulations correct a number of technical issues and errors in the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Hazardous Substances Regulations).
- 4 The Hazardous Substances Regulations establish requirements for the manufacture, use, storage and handling of explosive, flammable, toxic and corrosive substances at work. These 2017 regulations consolidated requirements found across fifteen sets of regulations, nine transfer notices and more than 1700 substance approvals.
- 5 Since the Hazardous Substances Regulations commenced in 2017, the Ministry of Business, Innovation & Employment and WorkSafe have become aware of a number of unintended effects making compliance difficult for some businesses.
- 6 These issues have meant businesses and others that previously met legal requirements no longer do so, due to small variations in requirements. In many such cases, the costs of complying with the 2017 regulations are grossly disproportionate to any increases in safety that would result. In other cases, businesses are having difficulty gaining insurance or there is an unacceptable level of uncertainty about what requirements are applicable.
- 7 The majority of these issues are a result of technical errors as earlier compliance instruments were transferred into the Hazardous Substances Regulations. In other cases, previously unrecognised issues that existed in earlier instruments are now being identified as businesses check their compliance with the Hazardous Substances Regulations.

Details of proposed changes

- 8 The Amendment Regulations make minor and technical changes to approximately 70 provisions of the Hazardous Substances Regulations.
- 9 The majority of these changes are extremely minor, such as correcting typographical errors, incorrect references to New Zealand or international standards, and clarifying wording to make the intent of specific regulations more clear.
- 10 Other changes address issues that are creating unintended and disproportionate compliance costs for some businesses. These include:
- Providing more flexibility in how far stores of toxic and corrosive substances must be separated from protected places (like on-site offices), where WorkSafe is satisfied the site has appropriate safety measures in place (see Amendment Regulations regs 36, 38 and 39)
 - Adding transitional arrangements to ensure that LPG tanks and cylinders installed to meet requirements that were in place before 2010 can continue to be used, provided base safety standards are met (reg 68)
 - Correcting an error that meant certain rooms designed for industrial mixing of paint were only permitted to hold up to 450 litres of flammable liquids (reg 26).

Adjustments from previous Cabinet approval

- 11 I also seek the Committee's approval to make a minor adjustment from a policy decision previously approved by Cabinet. In relation to the separation distances for above ground tanks containing liquefied flammable gases, Cabinet agreed for schedule 12 of the Hazardous Substances Regulations to be amended so that it refers to the correct unit of measurement. However, this reference should have instead been to schedule 25, and therefore agreement to make that amendment is sought.
- 12 I also seek approval to make the further minor amendments to the Hazardous Substances Regulations listed in Annex One. These will address additional minor issues that were identified during the drafting process.

Timing and 28-day rule

- 13 A waiver of the 28-day rule is not sought. The regulations will come into force on 5 January 2022, which is 47 days after which they will be notified in the *New Zealand Gazette*.

Compliance

- 14 The Amendment Regulations comply with each of the following:
- 14.1 the principles of the Treaty of Waitangi;

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- 14.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 14.3 the principles and guidelines set out in the Privacy Act 2020
- 14.4 relevant international standards and obligations;
- 14.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 15 I do not consider there to be any grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 16 The Amendment Regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Financial Implications

- 17 There are no significant financial implications expected from these amendments.
- 18 None of the proposed amendments will introduce additional costs or other compliance burden for businesses. Several will mean significant cost savings for some businesses as compliance is made more viable due to errors in the regulations being corrected or requirements that were in place prior to the current Hazardous Substances Regulations being restored.

Impact Analysis

- 19 The regulatory proposal in this paper is exempt from the requirements to provide a Regulatory Impact Statement based on the changes having only minor impacts.

Publicity

- 20 WorkSafe New Zealand will publicise information about these changes on their website and through industry newsletters.

Proactive release

- 21 I intend to proactively release this Cabinet paper, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

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Consultation

- 22 The Treasury and WorkSafe New Zealand were consulted on the Cabinet paper *Refrigeration, Heating and Air Conditioning Technicians: Proposed Regulatory Amendments* where the policy decisions that informed this paper were proposed. WorkSafe New Zealand, the Ministry for the Environment and the Environmental Protection Authority have been consulted on this paper.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 18 March 2020 the Cabinet Economic Development Committee agreed to make a number of technical amendments to the *Health and Safety at Work (Hazardous Substances) Regulations 2017* to address issues that are causing unintended compliance difficulties for some businesses [DEV-20-MIN-0050 refers].
- 2 **agree** to rescind the decision to amend schedule 12, table 2, of the *Health and Safety at Work (Hazardous Substances) Regulations 2017*;
- 3 **agree** to the further minor amendments to the *Health and Safety at Work (Hazardous Substances) Regulations 2017* listed in Annex One;
- 4 **note** that the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021 will give effect to the decision referred to in paragraph 1 above;
- 5 **authorise** the submission to the Executive Council of the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021;
- 6 **note** that the Health and Safety at Work (Hazardous Substances) Amendment Regulations 2021 will come into force on 5 January 2021.

Authorised for lodgement

Hon Michael Wood
Minister for Workplace Relations and Safety

Annex One: Minor amendments to Health and Safety at Work (Hazardous Substances) Regulations 2017

Regulation number/schedule	Regulation subject	Amendment
13.42(3)	Minimum separation between public places and hazardous substance locations containing packaged toxic substances	<p>This regulation provides that certain class 6 substances are exempted from the regulation if they also have a class 2.1.1, 2.1.2 or 3.1 classification. This is based on these substances also having separation requirements applied under Part 11.</p> <p>However, class 3.1D substances do not have separation requirements under Part 11, and so were included in this subsection in error.</p> <p>Agree to amend 13.42(3) to remove the reference.</p>
17.13(1)(a)	Design, construction, and installation of above ground stationary tanks for gases	<p>This regulation currently references the wrong sections of the incorporated standard.</p> <p>Agree to amend the references to “section 7.3 and section 7.5 of AS/NZS 1596:2014” so that the regulation correctly refers to “section 5.3 and section 5.5”</p>
17.80(2)	Records for stationary container systems	<p>This regulation refers to keeping records available describing how stationary container systems comply with “this subpart” and “subpart 18”. This is an error.</p> <p>Agree to amend this regulation so that records must be available showing how systems comply with Part 17.</p>
Schedule 8	Segregation requirements, by category, for explosive substances	<p>The key in the table is incomplete.</p> <p>Agree to amend the key in table 1 of schedule 8 so that it is complete.</p>
Schedule 25, table 2	Separation distances for above ground tanks	<p>Agree to amend schedule 25, table 2 so that it refers to the correct unit of measurement when specifying tank capacities.</p>
Various	References to Australian Standard on storage and handling of flammable liquids	<p>Agree to amend references throughout the regulations to the standard AS 1940 to the most recent 2017 version of the standard.</p>