

DRAFT FOR CONSULTATION

Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

Governor-General

Order in Council

At Wellington this day of 2023

Present:
in Council

These regulations are made under section 211 of the Health and Safety at Work Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after complying with sections 217(1) and 219(1) of that Act.

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Schedule 1
New Part 2 inserted into Schedule 1**Regulations****1 Title**

These regulations are the Health and Safety at Work (Adventure Activities) Amendment Regulations 2023.

2 Commencement

These regulations come into force on X.

Part 1**Amendments to the Health and Safety at Work (Adventure Activities) Regulations 2016****3 Principal regulations**

This Part amends the Health and Safety at Work (Adventure Activities) Regulations 2016.

4 Regulation 3 amended (Interpretation)

In regulation 3, insert in their appropriate alphabetical order:

natural hazard means any atmospheric or earth or water related occurrence (including volcanic activity, landslip, avalanche, rockfall, ice fall, storm, or flooding) the action of which adversely affects a location where an adventure activity is provided

near miss natural hazard event means a natural hazard that has a sudden and significant impact on a location where the operator provides, or intends to provide, an adventure activity, which,—

- (a) taking into account the hazard's type, severity, and other distinguishing features, is not a hazard routinely encountered during the ordinary course of the adventure activity; and
- (b) occurs when the adventure activity is not being provided; and
- (c) could have exposed a person participating in or providing the adventure activity to a serious risk to that person's health or safety if the event had occurred while the activity was being provided

5 New subpart 1 heading in Part 2 inserted

After the Part 2 heading, insert:

Subpart 1—Registration of adventure activity operators

6 Cross-heading above regulation 6 replaced

Replace the cross-heading above regulation 6 with:

Registration process

7 Regulation 6 amended (Requirement for adventure activity operator to pass safety audit)

- (1) In regulation 6(1), replace “an adventure activity operator” with “a person”.
- (2) In regulation 6, replace “the operator” with “the person” in each place.
- (3) In regulation 6(1)(a), replace “the operator’s” with “the person’s proposed”.
- (4) Revoke regulation 6(1)(c).
- (5) In regulation 6(3), replace “adventure activity operator” with “person”.
- (6) Replace regulation 6(3)(b) with:
 - (b) provide the person with a copy of—
 - (i) any audit report relating to the safety audit; and
 - (ii) any other audit related information needed for the person to apply to the Registrar for registration.
- (7) Revoke regulation 6(3)(c).
- (8) Revoke regulation 6(5).

8 New regulations 6A and 6B inserted

After regulation 6, insert:

6A Application for registration

- (1) A person to whom a safety audit certificate is issued under regulation 6(3)(a) may apply for registration as an adventure activity operator authorised to provide 1 or more of the adventure activities specified in the certificate.
- (2) An application under subclause (1) must—
 - (a) be made to the Registrar in the manner and form required by the Registrar; and
 - (b) be accompanied by the fee specified in regulation 17(4).
- (3) The application must contain the following information:
 - (a) the applicant’s full name;
 - (b) a postal or email address for communications;
 - (c) if the applicant will provide the adventure activities through a business or another operation, any legal name and trading name of the business or operation;
 - (d) a description of the adventure activities the applicant proposes to provide;

- (e) the location of each workplace at which the applicant will provide the adventure activities;
- (f) an estimate of the number of people the applicant anticipates will participate in the adventure activities each year;
- (g) a copy of the applicant's safety audit certificate;
- (h) a copy of any audit report relating to the safety audit the applicant passed to obtain the certificate.

6B Registrar may request additional information

- (1) On receiving an application for registration, the Registrar may ask an applicant to provide any additional information that the Registrar reasonably considers necessary to determine the application.
- (2) A request must—
 - (a) be in writing; and
 - (b) specify—
 - (i) the additional information required; and
 - (ii) the date by which the applicant must provide the information (which must be at least 28 days after the date of the request).
- (3) If the applicant does not provide the information requested by the specified date, the Registrar may refuse to grant the application for registration.
- (4) The Registrar may make more than 1 request.

9 Regulation 7 replaced (Registration of adventure activity operator)

Replace regulation 7 with:

7 Registration decision

- (1) The Registrar must, unless 1 or more of the grounds in subclause (2) or (3) apply, register an applicant as an adventure activity operator if satisfied that—
 - (a) the applicant has applied in accordance with these regulations; and
 - (b) the applicant is able to comply with any conditions that the Registrar proposes to impose on the registration.
- (2) The Registrar must refuse to register an applicant if the Registrar is satisfied on reasonable grounds that—
 - (a) the activities the applicant is seeking registration to provide are not adventure activities; or
 - (b) the applicant is unfit to be registered because of the improper way in which the applicant previously provided adventure activities.
- (3) The Registrar may refuse to register an applicant if the Registrar is satisfied on reasonable grounds that—

- (a) the applicant has given information that is false or misleading in a material particular, or failed to give any material information that they should have given, when—
 - (i) obtaining their safety audit certificate; or
 - (ii) applying for registration; or
 - (b) the applicant has not complied with a condition of their current safety audit certificate or any previous certificate; or
 - (c) the applicant has not complied with a condition imposed on any previous registration; or
 - (d) the applicant's previous failure to safely provide adventure activities, so far as is reasonably practicable, has endangered, or may have endangered, a person's life; or
 - (e) the applicant has previously provided adventure activities they needed to be registered to provide without being registered to provide the activities; or
 - (f) the applicant may not safely provide 1 or more of the adventure activities covered by the registration, so far as is reasonably practicable.
- (4) The Registrar's grounds for deciding on a matter under subclause (2) or (3) may, without limitation, be informed by—
- (a) the views of the safety auditor who issued the applicant's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7A Decision to grant registration: process

- (1) If the Registrar grants an application for registration under regulation 7(1), the Registrar must—
- (a) give the applicant written notice that they have been registered as an adventure activity operator; and
 - (b) update the register to record—
 - (i) that the applicant is registered as an adventure activity operator; and
 - (ii) the information specified in regulation 17(2) in respect of this adventure activity operator.
- (2) A notice under subclause (1)(a) must state—
- (a) the term for which the operator is registered; and
 - (b) the adventure activities that the operator is registered to provide; and
 - (c) the conditions (if any) imposed under regulation 7C on the operator's registration.

7B Decision to refuse registration: process

- (1) If the Registrar proposes to refuse to register an applicant, the Registrar must give the applicant a written notice—
 - (a) informing the applicant of the reasons for the proposed decision; and
 - (b) inviting the applicant to make a submission to the Registrar in relation to the proposed decision by a specified date (which must be at least 28 days after the Registrar gives the notice).
- (2) After the date specified in the notice, the Registrar must—
 - (a) consider any submission the applicant has made; and
 - (b) decide whether to register the applicant; and
 - (c) within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

Conditions of registration

7C Conditions of registration: decision

- (1) The Registrar may impose any conditions on a registered operator's registration that the Registrar considers are required in the interests of safety when the Registrar grants registration under regulation 7(1).
- (2) Without limiting subclause (1), the Registrar may impose conditions in relation to 1 or more of the following:
 - (a) the types of adventure activity the operator may provide;
 - (b) how the operator must provide an adventure activity;
 - (c) the circumstances in which the operator may and may not provide an adventure activity.
- (3) Conditions imposed under subclause (1) may replicate, or relate to matters covered by, conditions of the operator's safety audit certificate.
- (4) The Registrar's grounds for deciding on a matter in subclause (1) may, without limitation, be informed by—
 - (a) the views of the safety auditor who issued the operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7D Conditions of registration: process

- (1) If the Registrar proposes, under regulation 7C(1), to impose conditions on a registered operator's registration, the Registrar must give the operator—
 - (a) a written notice informing the operator of—
 - (i) the conditions the Registrar proposes to impose; and

- (ii) the Registrar's reasons for imposing those conditions; and
 - (b) a reasonable opportunity to make a submission on the proposed conditions.
- (2) The Registrar must, after providing the operator with a reasonable opportunity to make a submission,—
- (a) consider any submission the operator has made; and
 - (b) decide whether to impose conditions (which may be different to the conditions originally proposed).
- (3) Within 14 days after making a decision under subclause (2)(b), the Registrar must give the operator written notice of the decision that—
- (a) states the reasons for the decision; and
 - (b) sets out any conditions imposed on the operator's registration; and
 - (c) if any conditions take effect after registration is granted, specifies the date on which these conditions take effect (which must not be earlier than the date on which the operator is given written notice).

Term of registration

7E Term of registration

- (1) Registration as an adventure activity operator takes effect on the day it is granted and, subject to regulations 7F and 7G, expires at the end of the period for which the related safety audit is valid as specified in the registration holder's safety audit certificate (*see* regulation 6(3)(a)(ii)).
- (2) The expiry date of a registration as an adventure activity operator does not change if the related safety audit certificate is withdrawn or the safety audit otherwise ceases to be valid before the end of the period specified in the safety audit certificate.

Renewal of registration

7F Renewal of registration

- (1) Registration may be renewed on application and, subject to subclause (2), regulations 6 to 7D apply to the renewal in the same way as they apply to an initial application for registration.
- (2) Regulations 6 to 7D apply to applications for renewal—
 - (a) as if—
 - (i) references to an application for registration were references to an application for renewal of registration; and
 - (ii) noncompliance with conditions imposed on the applicant's current registration was a ground for declining to renew a registration

- under regulation 7(3)(c) (in addition to noncompliance with conditions imposed on previous registrations); and
- (iii) the Registrar's power under regulation 7C(1) included a power to vary existing conditions when granting an application for renewal of registration; and
 - (iv) the procedural requirements in regulation 7A(2)(c) and 7D applied to the Registrar's power to vary conditions in the same way as they apply to the Registrar's power under regulation 7C(1) to impose new conditions; and
- (b) with any other necessary modifications.
- (3) A registered operator's application under regulation 6A to renew their registration must be made before the registration expires.
- (4) If a registered operator applies to renew their registration, the registration is taken to continue in force from the day it would, apart from this subclause, have expired until,—
- (a) if the application is granted, the day the operator is given notice of the Registrar's decision on the application; or
 - (b) if the application is refused, the day specified in regulation 7G.
- (5) Subclause (4) does not prevent a registration from being suspended or cancelled.
- 7G Status of registration during review or appeal of renewal decision**
- (1) This regulation applies if the Registrar gives a registered operator written notice of the Registrar's decision to refuse to renew the operator's registration.
- (2) The operator's registration continues to have effect under this regulation after its expiry date passes until 1 of the following events occurs:
- (a) the operator does not apply for a review of the decision by the end of the time for applying for a review:
 - (b) the operator applies for a review of the decision and the review process ends because—
 - (i) the operator withdraws their application for review; or
 - (ii) WorkSafe makes a decision, on review, to grant the operator's application for renewal:
 - (c) the operator does not lodge an appeal against any other decision on review by the end of the time for lodging an appeal:
 - (d) the operator lodges an appeal and the appeal ends because—
 - (i) the operator withdraws the appeal; or
 - (ii) the District Court makes a decision on the appeal.

- (3) If the District Court decides the operator's application must be reconsidered by WorkSafe, regulations 7F(4) and 7G apply, with all necessary modifications, to this reconsideration as if it were a new application for review.
- (4) This regulation does not prevent a registration from being suspended or cancelled.

Suspension or cancellation of registration

7H Suspension or cancellation of registration: grounds

- (1) The Registrar must cancel a registered operator's registration if the Registrar is satisfied on reasonable grounds that—
 - (a) the operator was registered by mistake; or
 - (b) the operator is not an adventure activity operator.
- (2) The Registrar may cancel a registered operator's registration as an adventure activity operator, or suspend the registration for any period that the Registrar thinks fit, if the Registrar is satisfied on reasonable grounds that—
 - (a) the operator gave information that was false or misleading in a material particular, or failed to give any material information that they should have given, when obtaining their—
 - (i) safety audit certificate; or
 - (ii) registration; or
 - (b) the operator is unfit to be registered because of the improper way in which the operator has provided adventure activities; or
 - (c) the operator has not complied with a condition of the operator's current—
 - (i) safety audit certificate; or
 - (ii) registration; or
 - (d) the operator's failure to safely provide adventure activities, so far as is reasonably practicable, has endangered, or may have endangered, a person's life; or
 - (e) the operator has previously provided adventure activities they needed to be registered to provide without being registered to provide the activities; or
 - (f) the operator may not safely provide 1 or more of the adventure activities covered by the registration, so far as is reasonably practicable.
- (3) A suspension under subclause (2) may—
 - (a) suspend the operator's registration as a whole; or
 - (b) suspend the operator's registration to provide 1 or more of the adventure activities covered by the registration; and

- (c) be imposed for a period that ends in 1 or both of the following ways:
 - (i) at a specified point in time;
 - (ii) in specified circumstances.
- (4) The Registrar's grounds for deciding on a matter in subclause (1)(b) or (2) may, without limitation, be informed by—
 - (a) the views of the safety auditor who issued the operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7I Suspension or cancellation: process

- (1) If the Registrar proposes to suspend or cancel a registered operator's registration, the Registrar must give the operator a written notice—
 - (a) informing the operator of—
 - (i) the reasons for the proposed decision; and
 - (ii) for a proposal to suspend, when the suspension would begin and end; and
 - (b) inviting the operator to make a submission to the Registrar in relation to the proposed decision by a specified date (which must be at least 28 days after the Registrar gives the notice).
- (2) After the date specified in the notice, the Registrar must—
 - (a) consider any submission the operator has made; and
 - (b) decide whether to suspend or cancel the operator's registration.
- (3) Within 14 days after making the decision under subclause (2)(b), the Registrar must give the operator written notice that—
 - (a) states whether the operator's registration as an adventure activity operator has been suspended or cancelled (as applicable); and
 - (b) states the reasons for the decision; and
 - (c) for a suspension, specifies when the suspension begins and ends.

7J Immediate suspension of registration by Registrar

- (1) The Registrar may immediately suspend a registered operator's registration, without following the procedure in regulation 7I, if satisfied on reasonable grounds that the operator's provision of 1 or more of the adventure activities covered by the registration—
 - (a) may pose an imminent serious risk to the health or safety of any person; and
 - (b) should stop being provided because of this risk.
- (2) An immediate suspension under subclause (1) may—

- (a) suspend the operator's registration as a whole; or
 - (b) suspend the operator's registration to provide 1 or more of the adventure activities covered by the registration.
- (3) When the Registrar decides to immediately suspend a operator's registration—
- (a) the Registrar must, as soon as reasonably possible after the decision, give the operator written notice of the suspension and the reasons for it; and
 - (b) the suspension takes effect when the Registrar gives the notice.
- (4) An immediate suspension ends 14 days after the Registrar gives notice under subclause (3) unless, within the 14 day suspension period,—
- (a) the Registrar gives the operator written notice, under regulation 7I(1), that the Registrar proposes to suspend or cancel the operator's registration; or
 - (b) the Registrar withdraws the immediate suspension.
- (5) If subclause (4)(a) applies, the immediate suspension continues until the Registrar makes a decision about the relevant proposal and gives the operator written notice of this decision under regulation 7I(3).
- (6) The Registrar's grounds for deciding to suspend an operator's registration under subclause (1) may, without limitation, be informed by—
- (a) the views of the safety auditor who issued the operators's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

Conditions of registration at end of suspension of registration

7K Conditions at end of suspension: decision

- (1) The Registrar may, in connection with the end of a suspension of a registered operator's registration under regulation 7H(2) or 7J(1),—
- (a) impose conditions on the operator's registration; or
 - (b) vary the operator's existing conditions of registration.
- (2) The Registrar's power under subclause (1) may be exercised to impose any conditions, and make any variations to existing conditions, that the Registrar considers are required in the interests of safety.
- (3) Without limiting subclause (1), the Registrar may impose conditions in relation to 1 or more of the following:
- (a) the types of adventure activity the operator may provide;
 - (b) how the operator must provide an adventure activity;

- (c) the circumstances in which the operator may and may not provide an adventure activity.
- (4) Conditions imposed under subclause (1) may replicate, or relate to matters covered by, conditions of the operator's safety audit certificate.
- (5) The Registrar's grounds for deciding on a matter in subclause (1) may, without limitation, be informed by—
 - (a) the views of the safety auditor who issued the operator's current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

7L Conditions at end of suspension: process

- (1) If the Registrar proposes, under regulation 7K(1), to impose or vary conditions, the Registrar must give the registered operator—
 - (a) a written notice informing the operator of—
 - (i) the new conditions or variations to existing conditions that the Registrar proposes (as applicable); and
 - (ii) the Registrar's reasons for the proposal; and
 - (b) a reasonable opportunity to make a submission on the proposed conditions or variations.
- (2) The Registrar must give an operator notice under subclause (1)—
 - (a) at the same time as the Registrar gives the operator notice of the related proposed suspension or immediate suspension (as applicable); or
 - (b) if that is not possible, as soon as reasonably practicable after that time.
- (3) The Registrar must, after providing the operator with a reasonable opportunity to make a submission,—
 - (a) consider any submission the operator has made; and
 - (b) decide whether to impose or vary conditions (which may be different to the conditions or variations originally proposed).
- (4) The Registrar may make a decision under subclause (3)(b) even if the suspension the decision relates to has already ended.
- (5) Within 14 days after making a decision under subclause (3)(b), the Registrar must give the operator written notice of the decision that—
 - (a) states the reasons for the decision; and
 - (b) sets out any—
 - (i) conditions imposed on the operator's registration; and
 - (ii) variations to a operator's existing conditions of registration; and

- (c) specifies the date on which any conditions and variations to conditions take effect (which must not be earlier than the date on which the operator is given written notice).

Amendment of conditions of registration

7M Amendment of conditions

- (1) The Registrar may, at any time,—
 - (a) withdraw a condition of registration;
 - (b) vary a condition of registration to correct an error or omission;
 - (c) with the consent of the registered operator, vary a condition of registration other than to correct an error or omission.
- (2) If the Registrar decides to withdraw or vary a condition under subclause (1), the Registrar must give the registered operator written notice—
 - (a) informing the operator of the Registrar’s decision; and
 - (b) specifying the date on which the withdrawal or variation takes effect (which must not be before the date the operator is given written notice under this subclause); and
 - (c) setting out the conditions the registration will be subject to after the changes take effect.
- (3) The Registrar’s grounds for deciding on a matter in subclause (1) may, without limitation, be informed by—
 - (a) the views of the safety auditor who issued the operator’s current safety audit certificate; or
 - (b) the views of an inspector resulting from the exercise of their functions under the Act.

10 New cross-heading above regulation 8 inserted

After regulation 7M (as inserted by these regulations), insert the following cross-heading:

Adventure activity operators must be registered or exempt

11 Regulation 8 amended (Offence to provide or offer to provide adventure activities unless registered or exempt)

Revoke regulation 8(2)(b)(ii).

12 New regulations 8A to 8D and cross-headings inserted

After regulation 8, insert:

Duty to communicate risks

8A Duty to communicate risks associated with adventure activities

- (1) An adventure activity operator must take all reasonable steps to inform a person seeking to participate in an adventure activity that the operator provides of any serious risks to the person's health or safety the person may be exposed to if the person chooses to participate in the adventure activity.
- (2) A person who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Near miss natural hazard events

8B Duty to notify WorkSafe of near miss natural hazard events

- (1) An adventure activity operator must notify WorkSafe of any near miss natural hazard event as soon as practicable after the occurrence of the event becomes known to the operator.
- (2) However, the operator is not required to notify WorkSafe of a near miss natural hazard event under subclause (1) if the event is also a notifiable event the operator must notify WorkSafe of under section 56(1) of the Act (for example, a natural hazard declared by regulation 19(1)(a) to be a notifiable incident).
- (3) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

8C Notification of natural hazard incidents and near miss events: process

- (1) A person notifying WorkSafe of a natural hazard incident under regulation 8B(1)—
 - (a) may give the notification by telephone or in writing (including by email or other electronic means); and
 - (b) if giving notice by telephone, must—
 - (i) give the details of the event requested by WorkSafe; and
 - (ii) if required by WorkSafe, give a written notice of the event within 48 hours of being informed of the requirement.
- (2) Notice given in writing under subclause (1) must—
 - (a) be in a form approved by WorkSafe; and
 - (b) include the following information:
 - (i) the operator's name and address:

- (ii) the location where the event occurred:
 - (iii) the time and date the event occurred:
 - (iv) a brief description of the event:
 - (v) information about the actions (if any) the operator has taken in response to the event to ensure the operator’s adventure activities are safe:
 - (vi) any additional information WorkSafe requires.
- (3) If WorkSafe receives notice by telephone and does not require a written notice, WorkSafe must give the operator—
- (a) details of the information received; or
 - (b) an acknowledgement of having received notice.

8D Requirement to keep record of natural hazard incidents and near miss events

- (1) An operator must keep a record of each near miss natural hazard event for at least 5 years from the date on which it gives notice to WorkSafe under regulation 8B.
- (2) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$2,000:
 - (b) for any other person, to a fine not exceeding \$10,000.

13 New subpart 2 heading in Part 2 inserted

In Part 2, after regulation 8D (as inserted by these regulations), insert:

Subpart 2—Safety auditors, Registrar, and register of adventure activity operators

14 Regulation 9 amended (WorkSafe may recognise safety auditors)

In regulation 9(3), replace “declines” with “refuses”.

15 Regulation 12 amended (Functions of safety auditors)

- (1) In regulation 12(a)—
 - (a) replace “an adventure activity operator’s” with “a person’s”; and
 - (b) replace “operator provides” with “person provides or seeks to provide”.
- (2) In regulation 12(b), replace “adventure activity operators” with “people”.
- (3) Replace regulation 12(c) with:
 - (c) to give a person issued a safety audit certificate any safety audit related information the person needs to apply to the Registrar for registration; and

- (4) Revoke regulation 12(d).
- (5) In regulation 12(f), replace “7(2) or (3) or 18(1)(b) or (c) or (2)” with “7(2) or (3), 7C(1), 7H(1)(b) or (2), 7J(1), 7K(1), or 7M(1)”.
- (6) After regulation 12(f), insert:
 - (g) to provide WorkSafe with the auditor’s views on any matter relevant to a review of a decision of the Registrar by WorkSafe under regulations 18A to 18C when requested to do so under regulation 18B(2)(b).

16 Regulation 13 amended (WorkSafe may recognise Registrar)

In regulation 13(3), replace “declines” with “refuses”.

17 Cross-heading above regulation 16 revoked

Revoke the cross-heading above regulation 16.

18 Regulation 16 amended (Functions and powers of Registrar)

- (1) After regulation 16(a), insert:
 - (aa) to determine applications for registration as an adventure activity operator under regulation 7; and
- (2) In regulation 16(b), replace “regulation 18” with “regulations 7H and 7J”.
- (3) After regulation 16(b), insert:
 - (c) to impose, vary, or withdraw conditions of registration under regulations 7C, 7K, and 7M in appropriate situations; and
 - (d) to monitor adventure activity operators’ compliance with conditions of registration.

19 New cross-heading above regulation 17 inserted

After regulation 16, insert the following cross-heading:

Register of adventure activity operators

20 Regulation 17 amended (Register of adventure activity operators)

- (1) In regulation 17(2)(c), replace “address of each place of work” with “location of each workplace”.
- (2) In regulation 17(2)(e), delete “, being the period for which the operator’s current safety audit certificate is valid”.
- (3) In regulation 17(2)(f), replace “18(2)” with “7H(2) or 7J(1)”.
- (4) In regulation 17(2)(g), replace “18(1) or (2)” with “7H(1) or (2)”.
- (5) After regulation 17(2)(g), insert:
 - (h) any conditions currently imposed on the operator’s registration.
- (6) Revoke regulation 17(5).

21 Regulation 18 replaced (Cancellation or suspension of registration)

Replace regulation 18 with:

Subpart 3—Review and appeal of registration decisions

Review of registration decisions

18 Reviewable registration decisions

- (1) An applicant for registration or renewal of registration as an adventure activity operator may apply to WorkSafe for a review of any of the following decisions:
 - (a) a refusal to grant or renew the registration (under regulation 7(2) or (3), including as modified by regulation 7F(2));
 - (b) an imposition of conditions of registration when the registration is granted or renewed (under regulation 7C(1), including as modified by regulation 7F(2));
 - (c) a variation of conditions of registration when the registration is renewed (under regulation 7C(1) as modified by regulation 7F(2)).
- (2) A registered operator may apply to WorkSafe for a review of any of the following decisions:
 - (a) a suspension or cancellation of the operator’s registration (under regulation 7H(1) or (2));
 - (b) an immediate suspension of the operator’s registration (under regulation 7J(1));
 - (c) an imposition of conditions of registration in connection with the end of a suspension or immediate suspension (under regulation 7K(1));
 - (d) a withdrawal of a condition imposed on the operator’s registration (under regulation 7M(1)(a));
 - (e) a variation of a condition imposed on the operator’s registration (under regulation 7M(1)(b) or (c)).

18A Application for review

An application to WorkSafe for a review of a decision must—

- (a) be made in the manner and form required by WorkSafe; and
- (b) identify the decision or decisions to be reviewed; and
- (c) state the grounds for review; and
- (d) include—
 - (i) any submission that the applicant wants WorkSafe to consider; and
 - (ii) if applicable, a description of any action that the applicant has taken in response to the decision; and

- (e) be made within—
 - (i) 28 days after the date on which the Registrar gave written notice of the decision that is to be reviewed; or
 - (ii) any longer period allowed by WorkSafe.

18B Worksafe’s actions on receiving application for review

- (1) On receiving an application for review, WorkSafe must send the applicant a written acknowledgement.
- (2) WorkSafe may request—
 - (a) additional information from the applicant within a specified period (which must be at least 7 days from the date of the request);
 - (b) the safety auditor who issued the relevant safety audit certificate to give their views in relation to any matter relevant to the review.
- (3) The applicant must give WorkSafe the additional information referred to in subclause (2)(a) within the specified period.
- (4) If the applicant does not give WorkSafe the additional information within the specified period, WorkSafe may review the decision on the basis of the information it holds.
- (5) If the safety auditor gives Worksafe their views under subclause (2)(b), WorkSafe must give the applicant—
 - (a) a copy of the safety auditor’s views; and
 - (b) an opportunity to comment on the safety auditor’s views within a specified period (which must be at least 7 days from the date the applicant was given a copy of the views).

18C Review

- (1) WorkSafe must review a decision within 28 days after the last of the following:
 - (a) receiving an application for review; or
 - (b) receiving additional information from the applicant under regulation 18B(3) (if applicable); or
 - (c) receiving comments from the applicant under regulation 18B(5)(b) (if applicable).
- (2) In reviewing the decision, WorkSafe must have regard to—
 - (a) any submission by the applicant included in the application for review; and
 - (b) any information relevant to the decision—
 - (i) given to WorkSafe by the applicant in response to a request for additional information under regulation 18B(2)(a); and

- (ii) given to WorkSafe by a safety auditor in response to a request under regulation 18B(2)(b) (and the applicant's comments on this information, if any); and
 - (iii) given to WorkSafe by the Registrar (or, if WorkSafe is the Registrar, held by WorkSafe in its capacity as the Registrar); and
 - (c) if applicable, any action that the applicant has taken in response to the decision under review.
- (3) After conducting the review, WorkSafe must make a decision—
- (a) confirming the decision under review; or
 - (b) varying the decision under review; or
 - (c) withdrawing the decision under review.
- (4) Within 14 days after making a decision under subclause (3), WorkSafe must give the applicant written notice of the decision, including the reasons for the decision.

Appeals against review decisions

18D Appeal to District Court

- (1) A person who is given notice of a decision under regulation 18C(4) may appeal to the District Court against that decision.
- (2) The appeal must be lodged within 28 days after the date on which the appellant was given notice of the decision, or within any longer period that the court allows.
- (3) The court must inquire into the decision under appeal and may—
 - (a) confirm or vary the decision; or
 - (b) set aside the decision; or
 - (c) set aside the decision and replace it with a decision that the court considers appropriate; or
 - (d) refer the matter back to WorkSafe, directing WorkSafe to reconsider the whole or any specified part of the matter.
- (4) Subject to any order of the court, the decision under appeal continues to have effect pending the determination of the appeal.
- (5) Subclause (4) does not apply in the case of an appeal to which regulations 7F(4) and 7G apply (appeal against WorkSafe review of decision to refuse to renew registration).

22 New subpart 4 heading in Part 2 inserted

In Part 2, after regulation 18D (as inserted by these regulations), insert:

Subpart 4—Safety audit standards and declaration of notifiable events

23 New regulations 19A and 19B and cross-heading inserted

After regulation 19, insert:

*Declaration of notifiable events***19A Declaration of notifiable incidents**

- (1) The following incidents, when they occur in connection with an adventure activity, are declared to be notifiable incidents under section 24(1)(m) of the Act:
- (a) a natural hazard that, taking into account the hazard's type, severity, and other distinguishing features, is not a hazard routinely encountered during the ordinary course of the adventure activity;
 - (b) entrapment, entanglement, or immobilisation, including while in a vehicle or vessel;
 - (c) a fall from a height;
 - (d) a collision with an object, the ground, or another person;
 - (e) a collision between a vehicle and a person or object (including another vehicle), a vehicle overturning (regardless of which part of the vehicle is against the ground when it comes to rest), or an inrush of water into a vehicle;
 - (f) a collision between a vessel and a person or object (other than another vessel) or a vessel rolling (*see also* section 24(1)(l) of the Act);
 - (g) a situation where safety critical equipment used to provide an adventure activity—
 - (i) fails or malfunctions while in use; or
 - (ii) is defective and at significant risk of failure or malfunction while in use.
- (2) In this regulation, **safety critical equipment** means equipment used to provide an adventure activity that is critical to maintaining the safety of any person.

19B Declaration of notifiable injury or illness

- (1) An injury sustained or illness acquired by a person in connection with an adventure activity that requires the operator responsible for the activity to implement their emergency plan is declared to be a notifiable injury or illness under section 23(1)(e) of the Act.
- (2) In this regulation, **emergency plan** means an emergency plan prepared and maintained in accordance with regulation 14 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

24 New subpart 5 heading in Part 2 inserted

In Part 2, after regulation 19B (as inserted by these regulations), insert:

Subpart 5—Revocation

25 Cross-heading above regulation 20 revoked

Revoke the cross-heading above regulation 20.

26 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

Part 2

**Amendments to the Health and Safety at Work (Infringement
Offences and Fees) Regulations 2016**

27 Principal regulations

This Part amends the Health and Safety at Work (Infringement Offences and Fees) Regulations 2016.

28 Schedule 1 amended

In Schedule 1, after the table relating to the Health and Safety at Work Act 2015, insert:

Health and Safety at Work (Adventure Activities) Regulations 2016

Regulation	Description of offence	Fee (\$)	
		Individual	Entity
8D(2)	Failure to keep record of near miss natural hazard event	300	1,500

Schedule 1

New Part 2 inserted into Schedule 1

r 26

Part 2

Provisions relating to Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

1 Interpretation

In this Part—

existing registration application means an application for registration or renewal of registration under the original regulations where, immediately before the commencement of this clause,—

- (a) the applicant had engaged a safety auditor to conduct a safety audit under regulation 6 of the original regulations in respect of the application; and
- (b) the Registrar had not yet made an associated decision about whether to grant the application under regulation 7 of the original regulations

original regulations means these regulations as in force immediately before the commencement of the Health and Safety at Work (Adventure Activities) Amendment Regulations 2023.

2 Savings provision relating to registered adventure activity operators

- (1) This clause applies to a person who, immediately before the commencement of this clause, was registered as an adventure activity operator under regulation 7 of the original regulations.
- (2) On and after the commencement of this clause, the person continues to hold that registration and, subject to clauses 3 to 7 of this Part, must be treated as a person registered under regulation 7.

3 Existing registration applications where auditor has applied to Registrar

- (1) This clause applies to an existing registration application if, immediately before the commencement of this clause, the safety auditor has given the Registrar—
 - (a) a copy of the applicant's safety audit certificate; and
 - (b) the information required under regulation 6(3)(b) of the original regulations.
- (2) Where this clause applies to an existing registration application—

- (a) regulations 6 and 7 of the original regulations continue to apply to the Registrar's determination of the application (instead of regulations 6 to 7B, 7F, and 7G of these regulations); and
- (b) the Registrar must not impose conditions of registration under regulation 7C in respect of a decision to grant the application.

4 Other existing registration applications

Unless clause 3 applies to an existing registration application, these regulations (as amended) apply to the application and the safety auditor must promptly return any money the applicant has given the safety auditor to pay the fee specified in regulation 17(4).

5 Savings provision relating to unpaid fees

Regulation 17(5) of the original regulations continues to apply in respect of a registration granted or renewed—

- (a) before the commencement of this clause; or
- (b) if clause 3 applied to the associated application for registration or renewal of registration, after the commencement of this clause.

6 Savings provision relating to proposals to suspend or cancel registration

- (1) Regulation 18 of the original regulations continues to apply to a decision by the Registrar to suspend or cancel a person's registration that is made on or after the commencement of this clause, if, before the commencement of this clause, the Registrar has notified the person of the Registrar's proposal to suspend or cancel the person's registration.
- (2) The Registrar must not impose conditions under regulation 7K(1) in connection with the end of a suspension of a person's registration if the decision to suspend the person's registration was made under regulation 18 of the original regulations.

7 Savings provision relating to reviews and appeals

Regulations 18 to 18D do not apply to the following decisions of the Registrar:

- (a) a decision made before the commencement of this clause;
- (b) a decision made on or after the commencement of this clause under a provision of the original regulations saved by clause 3(2)(a) or 6(1).

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on [date], amend the Health and Safety at Work (Adventure Activities) Regulations 2016 (the **Adventure Activities Regulations**) and the Health and Safety at Work (Infringement Offences and Fees) Regulations 2016 (the **Infringement Offences and Fees Regulations**).

Regulations 1 and 2 give the Title and commencement date of these regulations.

Part 1 amends the Adventure Activities Regulations.

Regulation 4 amends regulation 3 (interpretation) to insert new defined terms related to natural hazards.

Regulations 7 and 8 amend regulation 6 and insert *new regulations 6A and 6B*.

New regulation 6A requires a person seeking registration as an adventure activity operator to apply to the Registrar directly (instead of the application being made by the safety auditor the person has engaged) and sets out the requirements for this application.

New regulation 6B allows the Registrar to seek additional information about an application.

The amendments to regulation 6 align this provision with the revised application process and make other minor changes to the provision.

Regulation 9 replaces regulation 7 and inserts *new regulations 7A to 7M*.

New regulation 7 sets out the circumstances in which the Registrar must grant an application for registration and the grounds on which an application may be refused.

New regulations 7A and 7B set out the process the Registrar must follow when granting or declining to grant an application for registration.

New regulations 7C and 7D allow the Registrar to impose conditions on a person's registration as an adventure activity operator when granting the person's registration application and set out the process the Registrar must follow when imposing these conditions.

New regulation 7E specifies how the start and end date for a registration as an adventure activity operator are determined.

New regulations 7F and 7G provide for registration renewal applications by registered operators, and preserve an operator's registration while their application for renewal (including any associated review or appeal) is resolved.

New regulations 7H and 7I set out the circumstances in which the Registrar may suspend or cancel a registered operator's registration and the process the Registrar must follow when making decisions about suspension or cancellation.

New regulation 7J allows the Registrar to immediately suspend a registered operator's registration without following the process in *new regulation 7I*. The Registrar may immediately suspend an operator's registration if satisfied on reasonable grounds

an adventure activity the operator provides may pose an imminent serious risk to the health and safety of any person and that the activity should therefore stop being provided. An immediate suspension ends after 14 days unless the Registrar withdraws the suspension early or seeks to suspend or cancel the operator's registration under *new regulation 7H* while the immediate suspension is in place.

New regulations 7K and 7L allow the Registrar to impose and vary conditions of registration in connection with the end of a suspension and set out the process the Registrar must follow when making these decisions.

New regulation 7M provides for withdrawal and variation of conditions of registration in other specified circumstances.

Regulation 12 inserts *new regulations 8A to 8D*.

New regulation 8A imposes a duty on adventure activity operators to take all reasonable steps to inform a person seeking to participate in an adventure activity the operator provides of any serious risks to the participant's health or safety the participant may be exposed to if they choose to participate.

New regulation 8B imposes a new duty on adventure activity operators to notify WorkSafe when a near miss natural hazard event occurs in a location where they provide, or intend to provide, adventure activities.

New regulations 8C and 8D set out the procedural requirements for notifications relating to near miss natural hazard events, and impose a new duty to keep records in relation to these events.

Regulation 15 amends regulation 12 (functions of safety auditors) to align the functions of safety auditors with other changes made to the Adventure Activities Regulations.

Regulation 18 amends regulation 16 (functions and powers of Registrar) to align the functions and powers of the Registrar with other changes made to the Adventure Activities Regulations.

Regulation 20 amends regulation 17 (register of adventure activity operators) to align this regulation with other changes made to the Adventure Activities Regulations. This includes a requirement for the Registrar to record any conditions imposed on an adventure activity operator's registration on the public register.

Regulation 21 replaces regulation 18 with *new regulations 18 to 18D*. *New regulations 18 to 18C* allow registered operators, and applicants for registration or renewal of registration, to ask WorkSafe to review specified decisions of the Registrar. *New regulation 18D* allows the person who applied for the review to appeal WorkSafe's decision on the review to the District Court.

Regulation 23 inserts *new regulation 19A and 19B*. *New regulation 19A* declares listed incidents that occur in connection with an adventure activity to be notifiable incidents under section 24(1)(m) of the Act. *New regulation 19B* declares an a new category of adventure activity specific notifiable injury or illness under section 23(1)(e) of the Act.

Regulation 26 amends Schedule 1 of the Adventure Activities Regulations to insert a *new Part 2* which contains transitional and savings provisions relating to amendments made by these regulations. These provisions, amongst other things, make it clear how applications and decision making processes underway when these regulations come into force must be dealt with.

Regulations 5, 6, 10, 11, 13, 14, 16, 17, 19, 22, 24, and 25 make other minor amendments to the Adventure Activities Regulations to make them easier to navigate and align existing regulations with the new regulations inserted.

Part 2 amends Schedule 1 of the Infringement Offences and Fees Regulations to make the offence in *new regulation 8D(2)* of the Adventure Activities Regulations (failure to keep record of near miss natural hazard event) an infringement offence.

Regulatory impact statement

The [name(s) of agency/agencies] produced [a regulatory impact statement/regulatory impact statements] on [date] to help inform the decisions taken by the Government relating to the contents of this instrument.

[A copy of this regulatory impact statement/Copies of these regulatory impact statements] can be found at—

- [to be inserted]
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation and Employment.