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## Health and Safety at Work (Hazardous Substances) Regulations 2016 consultation

MBIE is seeking feedback on the draft regulations for work involving hazardous substances. We are seeking specific feedback on the areas below before the government makes any final decisions.

### Approved handler certification

Consistent with the current proposal, the consultation draft has removed the current requirement to have one or more workers certified as an approved handler — except for those substances requiring a controlled substance licence — in light of the new duty in draft regulation 4.3 to provide information, instruction, and training to every worker that uses, handles, manufactures, or stores hazardous substances in the workplace.

We are seeking feedback on:

- whether a person conducting a business or undertaking (PCBU) should only be required to have one or more workers certified as an approved handler if a workplace uses, handles, or stores hazardous substances that require a controlled substance licence — in addition to complying with the new training duty at draft regulation 4.3. Compliance with the new training duty would be checked by compliance certifiers before issuing or renewing a location compliance certificate for a workplace (in accordance with draft regulations 10.33, 10.35, 12.18, 12.19, 12.42, 12.43, and 13.42) providing a greater level of coverage than monitoring by WorkSafe inspectors alone (**option 1: the current proposal**); or
- whether a PCBU should be required to have one or more workers certified as an approved handler if a workplace uses, handles, or stores hazardous substances of a classification and quantity that currently triggers the approved handler requirements — in addition to complying with the new training duty at draft regulation 4.3. Compliance with the new training duty would be checked by compliance certifiers before issuing or renewing a location compliance certificate for a workplace, in addition to checking that approved handler requirements have been met (**option 2: retain approved handler for certain classification categories**).
  - In relation to option 2 we are also interested to know what hazard classifications the current requirement should be retained for (and why) and the threshold quantities that should trigger the requirement (and why)



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## **Storage of toxic (class 6) and corrosive (class 8) substances not located at a hazardous substance location**

- Specifying requirements, based on section 2.3 of AS/NZS 4452:1997 *the storage and handling of toxic substances* and section 2.3 of AS 3780:2008 *the storage and handling of corrosive substances*, for the safe storage of class 6 or 8 substances at a workplace if the PCBU with management or control of the workplace is not required to establish a hazardous substance location (draft regulation 13.30).
- Specifying requirements, based on section 2.4 of AS/NZS 4452:1997 *the storage and handling of toxic substances*, for the safe storage of class 6 or 8 substances at a farm of not less than 4 hectares that is not required to establish a hazardous substance location (draft regulation 13.31).

## **Controls on transit depots where class 6 or 8 substances present**

Specifying requirements for the storage of class 6.1A, 6.1B, 6.1C, or 8.2A substances at transit depots (draft regulation 13.32), including:

- notifying WorkSafe (before commissioning) of the maximum quantity of each of the class 6.1A, 6.1B, 6.1C, or 8.2A substances that the transit depot is designed or constructed to accommodate
- ensuring that all class 6.1A, 6.1B, 6.1C, or 8.2A substances remain within their closed containers
- ensuring that any road vehicle loaded with containers of class 6 or 8 substances are separated appropriately from compatible and incompatible substances
- ensuring that any electrical wiring or equipment within the transit depot is appropriate
- designating areas for containment of any leaked or spilled material or damaged packages
- ensuring that stacking of packages, intermediate bulk containers, and transportable containers containing class 6.1A, 6.1B, 6.1C or 8.2A substances in the transit depot is appropriate

We are also seeking feedback on whether these requirements should also apply to class 8.2B substances.

## **Segregation requirements for class 6 or 8 substances**

A requirement on PCBUs, based on HSNO Code of Practice 16, to ensure that a class 6.1A, 6.1B, 6.1C, or 8.2A substance does not come into contact with any substance or material with which it is incompatible, except where the mixing of a substance with another substance with which it is incompatible is intended (draft regulation 13.33).



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We are also seeking feedback on whether this requirement should also apply to class 8.2B substances.

### **Duty to establish hazardous substance location where class 6.1A, 6.1B, 6.1C or 8.2A substances present**

- A requirement on PCBUs to establish a hazardous substance location where any class 6.1A, 6.1B, 6.1C, or 8.2A substances are present above specified threshold quantities (draft regulation 13.37).
- Specifying requirements for the storage of class 6.1A, 6.1B, 6.1C, or 8.2A substances at a hazardous substance location (draft regulation 13.37), including:
  - requirements, based on section 4.4.1 of AS/NZS 4452:1997 *the storage and handling of toxic substances*, for the storage of class 6.1A, 6.1B, 6.1C, or 8.2A substances at a package store, other than an indoor storage cabinet
  - requirements, based on section 4.4.2 of AS/NZS 4452:1997 *the storage and handling of toxic substances*, for the storage of class 6.1A, 6.1B, or 6.1C substances in an indoor storage cabinet
  - requirements, based on section 4.6 of AS 3780:2008 *the storage and handling of corrosive substances*, for the storage of class 8.2A substances in an indoor storage cabinet
  - notifying WorkSafe (before commissioning) of the maximum quantity of each of the class 6.1A, 6.1B, 6.1C, or 8.2A substances that the hazardous substance location is designed or constructed to accommodate
  - ensuring that a compliance certificate is obtained (if required)
  - ensuring that a site plan is available for inspection
  - ensuring that all workers handling a class 6.1A, 6.1B, 6.1C or 8.2A substance have received suitable information, instruction, and training
- The proposed threshold quantities that trigger the requirement to establish a hazardous substance location and the alternative threshold quantities that apply to a hazardous substance location situated on a farm of not less than 4 hectares (draft regulation 13.41).

We are also seeking feedback on whether these requirements should also apply to class 8.2B substances.



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## **Compliance certificate required for hazardous substance location where class 6.1A, 6.1B, 6.1C or 8.2A substances present**

- A requirement on PCBUs to ensure that a hazardous substance location has a current compliance certificate where any class 6.1A, 6.1B, 6.1C, or 8.2A substances are present above specified threshold quantities (draft regulation 13.41).
- Specifying the matters to be certified (draft regulation 13.42), including:
  - the notification requirements have been complied with, and the maximum quantities as notified are not exceeded
  - all workers handling a class 6.1A, 6.1B, 6.1C, or 8.2A substance have received suitable information, instruction, and training
  - the hazardous substance location complies with,—
    - the requirements for the storage of class 6.1A, 6.1B, 6.1C, or 8.2A substances at a package store, other than an indoor storage cabinet
    - the requirements for the storage of class 6.1A, 6.1B, or 6.1C substances in an indoor storage cabinet
    - the requirements for the storage of class 8.2A substances in an indoor storage cabinet
  - the separation requirements for protected places and public places are met
  - any fixed structure or installed equipment within the location is constructed from compatible material
  - suitable equipment is used to handle the substance or personal protective equipment
  - the location has signage in place
  - the requirements for emergency management are complied with
  - the hazardous substance location has clean up materials and equipment.

We are also seeking feedback on whether these requirements should also apply to class 8.2B substances.



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## **Separation of hazardous substance location, where class 6.1A, 6.1B, 6.1C or 8.2A substances present, from protected places and public places**

- Specifying requirements for the separation of a hazardous substance location containing class 6.1A, 6.1B, or 6.1C hazardous substances, above specified threshold quantities, from a protected place (draft regulation 13.43)
- Specifying requirements for the separation of a hazardous substance location containing class 6.1A, 6.1B, or 6.1C hazardous substances, above specified threshold quantities, from a public place (draft regulation 13.44)
- Specifying requirements for the separation of a hazardous substance location containing a class 8.2A hazardous substance, above specified threshold quantities, from a protected place (draft regulation 13.45).

### **Transitional provisions**

Your feedback is welcome on whether the transitional, savings, and related provisions set out in Schedule 1 of these draft regulations are appropriate.

### **Offences and penalties**

Your feedback is also welcome on whether the criminal offences and maximum penalties (to be imposed by a Court in the event of a prosecution) identified in these draft regulations are appropriate.

### **Infringement offences and fees**

In addition, we propose that the infringement offences and fees (on-the-spot fines issued by notice by a health and safety inspector) in **Attachment A** should apply in respect of these regulations. These offences would be presented in the *Health and Safety at Work (Infringement Offences and Fees) Regulations 2016*.

### **Fees for services**

Your feedback is also welcome on the fees that WorkSafe will charge for services provided under these draft regulations. Refer to **Attachment B** for further details.



**Attachment A**

Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
<b>Part 2</b>			
2.1(1), (3) & (4)	PCBU fails to label a hazardous substance container correctly	1,800	9,000
2.2	PCBU fails to correctly label a waste hazardous substance from manufacturing or industrial processes	1,800	9,000
2.3	PCBU fails to correctly label a stationary container or bulk transport container	1,800	9,000
2.4(1)	PCBU fails to provide signage when required	1,800	9,000
2.7(1)	PCBU fails to maintain signage when required	1,800	9,000
2.8	PCBU fails to ensure that safety data sheets are readily accessible to workers and emergency service workers	1,800	9,000
2.9	PCBU fails to prepare safety data sheet for a waste hazardous substance from manufacturing or industrial processes	1,800	9,000
2.10	PCBU fails to correctly package decanted or transferred hazardous substances	1,800	9,000
2.11	If a PCBU fails to decant or transfer petrol, aviation gasoline, or racing gasoline into a suitable portable container	1,800	9,000
<b>Part 3</b>			
3.1(1)	PCBU fails to prepare and maintain an inventory of hazardous substances present at the workplace	1,800	9,000
3.1(2)	PCBU fails to ensure that the inventory of hazardous substances includes the prescribed details	1,800	9,000
3.1(3)	PCBU fails to ensure that the inventory of hazardous substances is readily accessible to any emergency service worker attending the workplace	1,800	9,000
<b>Part 4</b>			
4.3(6)	PCBU fails to keep a record of instruction and training provided to workers that use, handle, manufacture, or store hazardous substances	600	3,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
<b>Part 5</b>			
5.12(3) and (4)	PCBU fails to keep a record, for at least 2 years, of the results of every test of an emergency response plan	600	3,000
<b>Part 6</b>			
6.20(2)	Compliance certifier issues a compliance certificate when a conflict of interest exists	500	-
6.20(4)	Compliance certifier fails to enter a compliance certificate into the compliance certificate register within 15 days of issuing the certificate	500	-
6.21(2)	Compliance certifier fails to specify the relevant requirements that have not been met, and the date by which those requirements must be met, in a conditional compliance certificate	500	-
6.21(5)	Compliance certifier fails to enter a conditional compliance certificate into the compliance certificate register within 15 days of issuing the certificate	500	-
6.22(3)	Compliance certifier fails to enter the prescribed details for a compliance certificate into the compliance certificate register	500	-
<b>Part 8</b>			
8.2(1)	A person conveys a class 1, 3.1A, 4.1.2A, 4.1.3A, 4.1.3B, 4.1.3C, 4.2A, 4.3A, 5.1.1A or 5.2A substance on a passenger service vehicle	500	-
8.2(2)	A person conveys a class 1 to 5 substance on a passenger service vehicle above the prescribed threshold quantities	500	-
8.3(1)	A person conveys more than 20kg of LPG on a passenger service vehicle	500	-
8.3(2)	PCBU fails to ensure that LPG is stowed properly on a passenger service vehicle	1,800	9,000
<b>Part 9</b>			
9.3	PCBU fails to ensure that a class 1 substance in any quantity is under the personal control of an approved handler	1,800	9,000
9.4	A person possesses a class 1 substance listed in table 1 of Schedule 7 without a controlled substance licence	500	-



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
9.5	A person possesses smokeless powder or certain other propellants listed in table 3 of Schedule 7 without a firearms licence, or a firearms dealer's licence, or a controlled substance licence	500	-
9.7	PCBU sells or otherwise supplies a class 1 substance listed in table 1 of Schedule 7 to a person without a controlled substance licence	1,800	9,000
9.27(2)	PCBU who directs the detonation or deflagration of a class 1 substance fails to notify WorkSafe at least 3 working days before the first firing occurs	1,800	9,000
9.34(1)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to notify WorkSafe at least 3 working days before the first firing occurs	1,800	9,000
9.34(2)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to obtain prior written approval from the New Zealand Fire Service or the National Rural Fire Authority	1,800	9,000
9.34(6)(a)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to notify WorkSafe of any incidents that occur at the display	1,800	9,000
9.34(4)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to prepare a record of the display that includes the prescribed details	600	3,000
9.34(5)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to produce a record of the display for inspection by an inspector	600	3,000
9.34(6)(b)	PCBU who directs the carrying out of an outdoor pyrotechnic display involving class 1 category G substances fails to maintain a record of any incidents that occur at the display	600	3,000
9.41(1)(b)	PCBU who directs the carrying out of an indoor pyrotechnic display involving class 1 category G substances fails to notify WorkSafe at least 3 working days before the display occurs	1,800	9,000





Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
9.41(2)	PCBU who directs the carrying out of an indoor pyrotechnic display involving class 1 category G substances fails to obtain prior written approval from the New Zealand Fire Service or the National Rural Fire Authority before the display occurs	1,800	9,000
9.43(2)	PCBU who directs transfer of class 1 substances from one type of transport to another fails to display the correct signage	1,800	9,000
9.45(2)	PCBU with management or control of class 1 substances at a designated transfer zone fails to establish, and have available for inspection, documented procedures for the implementation of requirements prescribed by regulations 9.11 to 9.14 and 9.16	600	3,000
9.47(1)	PCBU who directs the transportation of a class 1 substance on public roads or by rail fails to notify the New Zealand Transport Agency and the New Zealand Police at least 24 hours before departure on a new route	1,800	9,000
<b>Part 10</b>			
10.4	PCBU fails to ensure that a class 2, 3, or 4 substance, above the specified threshold quantity, is secured when left unattended	1,800	9,000
10.8(1)(f)	PCBU fails to record which regulation a class 2.1.1, 2.1.2 or 3.1 substance is being managed under, and have that record available for inspection	600	3,000
<b>Part 11</b>			
11.43(2)	PCBU that provides LPG to a hazardous substance location fails to verify, before the first delivery of LPG to the location, that the hazardous substance location has a current compliance certificate or a valid compliance plaque	1,800	9,000
11.43(3)	PCBU that provides LPG to a hazardous substance location fails to establish that the location meets the minimum standards and fix a compliance plaque to the location within 60 days of first delivery	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
11.43(6)	PCBU that provides LPG to a hazardous substance location fails to sign a record confirming that the location continues to meet the minimum standards, on or before the expiry date of compliance plaque	600	3,000
11.43(7)	PCBU that provides LPG to a hazardous substance location fails to retain a copy of the record confirming that a location continues to meet the minimum standards	600	3,000
11.43(8)	PCBU that provides LPG to a hazardous substance fails to sign a record confirming that the location continues to meet the minimum standards before fitting a new compliance plaque to the location	1,800	9,000
11.43(9)	PCBU fails to ensure that compliance plaques have an expiry date no longer than 36 months from the date of issue	1,800	9,000
<b>Part 12</b>			
12.4	PCBU fails to ensure that a class 5.1.1 or 5.1.2 substance, above the specified threshold quantity, is secured when left unattended	1,800	9,000
12.7	PCBU fails to ensure that personal protective equipment is suitable for working with class 5.1.1 or 5.1.2 substances	1,800	9,000
12.12	PCBU fails to ensure that a worker uses personal protective equipment when handling a class 5.1.1 or 5.1.2 substance, where contact or exposure is intended or anticipated	1,800	9,000
12.24	PCBU fails to ensure that a class 5.2 substance, above the specified threshold quantity, is secured when left unattended	1,800	9,000
12.29	PCBU fails to ensure that personal protective equipment is suitable for working with class 5.2 substances	1,800	9,000
12.30	PCBU fails to ensure that a worker uses personal protective equipment when handling a class 5.2 substance, where contact or exposure is intended or anticipated	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
<b>Part 13</b>			
13.4	PCBU fails to keep a written record of each application of a class 6.1A, 6.1B, 6.1C, 6.6A, 6.7A, 8.2A, or 8.2B substance in a place where members of the public may be present	600	3,000
13.5(1)	PCBU fails to include the prescribed details in the written record for each application of a class 6.1A, 6.1B, 6.1C, 6.6A, 6.7A, 8.2A, or 8.2B substance	600	3,000
13.5(2)	PCBU fails to keep, for not less than 3 years, the written record for each application of a class 6.1A, 6.1B, 6.1C, 6.6A, 6.7A, 8.2A, or 8.2B substance	600	3,000
13.6	PCBU for a workplace in which sodium fluoroacetate is present fails to provide WorkSafe with the required information by no later than 31 March	1,800	9,000
13.7(2)	PCBU fails to ensure that suitable equipment is used to handle a class 6, 8.2 or 8.3 substance	1,800	9,000
13.7(3) and (4)	PCBU fails to ensure that equipment used to handle a class 6, 8.2 or 8.3 substance is accompanied by use and maintenance documentation	600	3,000
13.8	PCBU fails to provide personal protective equipment to workers using a class 6.1A to 6.1D, 6.3A, 6.5A and B, 6.6A and B, 6.7A and B, 6.8A to C, 6.9A and B, 8.2A to C, or 8.3A substance	1,800	9,000
13.9	PCBU fails to ensure that personal protective equipment is suitable for working with anti-fouling paints	1,800	9,000
13.10	PCBU fails to ensure that a worker who is mixing, loading, or applying an organophosphate or carbamate plant protection insecticide wears, at a minimum, the prescribed personal protective equipment	1,800	9,000
13.11	PCBU fails to ensure that a class 6 or 8 substance, for which a controlled substance licence is required, is under the personal control of an approved handler	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
13.12	PCBU fails to ensure that a class 6 or 8 substance, above the specified threshold quantity, is secured when left unattended	1,800	9,000
13.15	A person possesses a hazardous substance listed in Schedule 13 without a controlled substance licence	500	-
13.16(2)	PCBU sells or otherwise supplies a Schedule 13 substance to a person without a controlled substance licence	1,800	9,000
13.16(3)	A person purchases or otherwise acquires a Schedule 13 substance without a controlled substance licence	1,800	9,000
13.17(1)	A person conveys a class 6.1B, 6.1C, 6.5A, 6.5B, 8.2B, or 8.2C substance on a passenger service vehicle above the prescribed threshold quantities	500	-
13.17(2)	A person conveys a class 6.1A or 8.2A substance on a passenger service vehicle	500	-
13.18	Person fails to transport material impregnated with dichlorvos in accordance with additional restrictions that apply	500	-
13.19	Person fails to transport certain vertebrate toxic agents in accordance with additional restrictions that apply	500	-
13.23	PCBU fails to erect appropriate signage when a vertebrate toxic agent is laid outdoors	1,800	9,000
13.24(4) and (5)	PCBU fails to erect appropriate signage when carrying out aerial application of vertebrate toxic agents	1,800	9,000
13.25	If an unauthorised person remains in the vicinity of the application area for certain vertebrate toxic agents	500	-
13.26(4) and (5)	PCBU fails to erect appropriate signage when carrying out work using antifouling paints	1,800	9,000
13.29	PCBU fails to erect appropriate signage for certain pesticides applied in an indoor environment	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
<b>Part 14</b>			
14.6	A person possesses a hazardous substance listed in table 1 of Schedule 17 without a controlled substance licence	500	-
14.7	PCBU fails to give notice before carrying out fumigation	1,800	9,000
14.8	PCBU fails to give notice at least 24 hours before carrying out fumigation	1,800	9,000
14.9	PCBU fails to give notice before carrying out fumigation using Tri-Form 60, a substance from the Ripper range, or any other substance specified in a safe work instrument	1,800	9,000
14.11	PCBU fails to erect appropriate signage for fumigation	1,800	9,000
14.12	PCBU fails to erect appropriate signage for fumigation using Tri-Form 60, a substance from the Ripper range, or any other substance specified in a safe work instrument	1,800	9,000
14.29	PCBU fails to provide notice of completion when the fumigation is complete	1,800	9,000
14.30	PCBU fails to keep a written record of each application of a fumigant	600	3,000
14.31	PCBU fails to include the prescribed details in the written record for each application of a fumigant	600	3,000
14.32	PCBU fails to include the prescribed details in the written record for each application of a fumigant from the Ripper range	600	3,000
14.40	PCBU fails to keep a written record of each quarantine and pre-shipment fumigation using methyl bromide	600	3,000
14.41(1)	PCBU fails to keep a record for each ventilation of the 1 hour and 24 hour exposure level	600	3,000
14.41(3)	PCBU fails to ensure that the records for each ventilation of the 1 hour and 24 hour exposure level are kept for not less than 7 years	600	3,000
14.41(2)	PCBU fails to notify WorkSafe and the relevant Medical Officer of Health if either the 1 hour or 24 hour exposure level exceeds the tolerable exposure limit for methyl bromide	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
14.42(1)	PCBU fails to produce an annual monitoring report	600	3,000
14.42(3)	PCBU fails to include the prescribed details in the annual monitoring report	600	3,000
14.42(4)	PCBU fails to provide the annual monitoring report to WorkSafe and the relevant Medical Officer of Health within the prescribed timeframe	1,800	9,000
14.48	PCBU fails to give notice before carrying out quarantine and pre-shipment fumigation using methyl bromide	1,800	9,000
14.49	PCBU fails to erect appropriate signage for quarantine and pre-shipment fumigation using methyl bromide	1,800	9,000
14.50(2)	PCBU fails to provide a report setting out the PCBU's progress in introducing recapture technology for quarantine and pre-shipment fumigation using methyl bromide	1,800	9,000
14.53	PCBU fails to give notice before carrying out soil fumigation for potato wart using methyl bromide	1,800	9,000
14.55	PCBU fails to erect appropriate signage for soil fumigation for potato wart using methyl bromide	1,800	9,000
<b>Part 15</b>			
15.14(1)(b)	PCBU who manufactures a cylinder fails to obtain a manufacturing certificate from a recognised inspection agency	1,800	9,000
15.14(1)(c)	PCBU who manufactures a cylinder fails to provide a copy of the manufacturing certificate to the purchaser	1,800	9,000
15.15(1)(d)	PCBU who manufactures a cylinder fails to ensure that the labelling and marking of the cylinder complies with the requirements of subpart 7	1,800	9,000
15.15(1)(e)	PCBU who manufactures a cylinder fails to provide a copy of the manufacturing certificate to a retailer	1,800	9,000
15.40	PCBU fails to ensure that a refillable cylinder or a fire extinguisher is marked correctly	1,800	9,000
15.41	PCBU fails to ensure that a cylinder containing dry gas is marked correctly	1,800	9,000



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
15.42	PCBU fails to ensure that a cylinder containing toxic gas of class 6.1A or B is marked correctly	1,800	9,000
15.43	PCBU fails to comply with the marking size requirements	1,800	9,000
15.44	PCBU tampers with a mark on a cylinder, cylinder fitting, or fire extinguisher	1,800	9,000
15.45	PCBU fails to ensure that a cylinder valve is marked correctly	1,800	9,000
15.46	PCBU fails to ensure that a cylinder regulator is marked correctly	1,800	9,000
15.48	PCBU fails to ensure that an automatic changeover device is marked correctly	1,800	9,000
15.49	PCBU fails to ensure that fittings are marked correctly	1,800	9,000
15.50	PCBU fails to ensure that an aerosol dispenser is marked correctly	1,800	9,000
15.51	PCBU fails to ensure that a non-refillable container is marked correctly	1,800	9,000
15.53	PCBU charges a cylinder that has not passed the prescribed tests	1,800	9,000
15.54(1)(a)	PCBU who operates a test station fails to keep records for all cylinder testing	600	3,000
15.54(4)	PCBU who operates a test station allows a person to remove a failed cylinder from the test station without the consent of an inspector	1,800	9,000
15.61(1)	A person carrying out the duties of an approved filler does not hold an approved filler certificate issued by a compliance certifier	500	-
<b>Part 16</b>			
16.5	PCBU fails to ensure that the correct markings are attached to the tank or tank sub-frame	1,800	9,000
16.39(2)	A worker fills a tank compartment to a level beyond the maximum filling level	500	-
16.40	A worker fails to safely transfer a liquid or gaseous hazardous substance to or from a tank wagon	500	-
16.41	A worker fails to make a tank wagon safe when it will be left unattended for a short period of time	500	-



Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
<b>Part 17</b>			
17.75	PCBU fails to ensure that the correct markings are attached to a stationary tank	1,800	9,000
17.76	PCBU fails to ensure that the markings attached to a stationary tank are renewed as often as is necessary to ensure that they are legible	1,800	9,000
17.77	PCBU fails to ensure that pipework connected to an above ground stationary tank is marked correctly	1,800	9,000
17.78	PCBU fails to ensure that the markings on pipework connected to an above ground stationary tank are renewed as often as is necessary to ensure that they are legible	1,800	9,000
17.79(1)	PCBU fails to keep a plan of the physical position of a stationary container system	600	3,000
17.79(2)	PCBU fails to keep records that describe how a stationary container system complies with Part 15	600	3,000
17.79(3)	PCBU fails to update the plan or records for a stationary container system when the stationary container system is modified, repaired, or relocated	600	3,000
17.80	PCBU fails to ensure that the plan or records for a stationary container system are readily available for inspection	600	3,000
<b>Part 18</b>			
18.6(1)	PCBU fails to erect appropriate signage for a laboratory	1,800	9,000
18.7	PCBU fails to keep an accurate record of hazardous substances that would be tracked substances outside the laboratory and substances that are not approved hazardous substances	600	3,000
18.8	PCBU for a laboratory in which sodium fluoroacetate is present fails to provide WorkSafe with the required information by no later than 31 March	1,800	9,000





Draft regulation	Description of infringement offence	Infringement fee (\$)	
		Individual	Entity
18.9(3)	PCBU for a laboratory in which sodium fluoroacetate is present fails to ensure that sodium fluoroacetate is secured when left unattended	1,800	9,000
18.9(4)	PCBU fails to label a container for an approved hazardous substance being used in a laboratory correctly	1,800	9,000
18.10(3)	PCBU fails to label a container for a non-approved hazardous substance being used in a laboratory correctly	1,800	9,000
18.11	PCBU fails to ensure that a small container used for holding a hazardous substance in a laboratory meets the prescribed specifications	1,800	9,000
18.14	PCBU fails to ensure that every person handling a hazardous substance in the laboratory is provided with the prescribed information	1,800	9,000
<b>Part 19</b>			
19.3	PCBU fails to record the location and movement of a tracked substance	600	3,000
19.4	PCBU fails to keep a record relating to a tracked substances	600	3,000
19.6	PCBU fails to keep a record relating to a tracked substance for the minimum specified period	600	3,000



## **Commentary on proposed fees in the exposure draft of the Health and Safety at Work (Hazardous Substances) Regulations**

This attachment provides information about the fees proposed in Schedule 1A of the exposure draft *Health and Safety at Work (Hazardous Substances) Regulations* (the hazardous substances regulations).

### **What's happening?**

As part of the *Working Safer* reforms, the Government agreed that the *Hazardous Substances and New Organisms Act 1996* (HSNO Act) will no longer set requirements for the management of hazardous substances in the workplace. Instead, these requirements will be set in the hazardous substances regulations proposed to be made under the new *Health and Safety at Work Act 2015*.

This means that WorkSafe New Zealand – rather than the Environmental Protection Authority (EPA) – will be responsible for the administration and enforcement of the hazardous substances regulations, and for oversight of the compliance certification regime. In anticipation of this change, the EPA delegated this oversight function to WorkSafe NZ in September 2014.

The Ministry of Business, Innovation and Employment (MBIE) and WorkSafe NZ have reviewed the fees associated with the parts of the HSNO regime being transferred to the hazardous substances regulations. These fees were last set by the EPA in 2010.

### **What are we proposing?**

We are proposing that the fees should be set at a level that reflects the actual costs incurred by WorkSafe NZ when authorising individuals and organisations, approving equipment, and granting exemptions. Currently, the fee amounts do not fully recover WorkSafe NZ's costs of providing these services – meaning that, in some cases, the costs are being subsidised by people who are not receiving any direct benefit from the service itself.

For example, fees set in 2010 for authorising compliance certifiers and granting controlled substance licences only recovered between 15 and 33 percent of the actual cost of providing these services. The fees for applications related to approvals of equipment (eg burners) and exemptions (eg non-removal of disused below-ground tanks) were set at about 75 percent cost recovery in 2010. As these fees have not changed since, cost recovery has fallen below these levels.



## The proposed fees

The proposed fees are outlined below, arranged by type. Where no current fee is provided, this means the proposed fee is for a new service. Any changes are explained further below.

### Authorisations

Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
6.3	Application for authorisation as a compliance certifier	\$830 (5 years)	\$264.50 (1 year)* \$552.00 (5 years)*
6.11	Application to vary the conditions of compliance certifier authorisation	\$583	\$172.50
6.12	Renewal of compliance certifier authorisation	\$415 (5 years)	\$207 (1 year)* \$494.50 (5 years)*
7.1	Application for controlled substance licence	\$201	\$80.50
15.1	Application for approval as a test station	\$369	-
15.1	Recognised inspection agency	\$870	\$517.50
15.1	Recognised inspection agency (renewal)	\$456	\$345

\*This includes the maintenance fee

### Audit

Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
6.33	Cost of audit	\$976	-
6.33	Hourly rate for audits for each hour exceeding eight hours	\$137	-



### Approval of equipment

Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
17.47	Application for approval of a dispenser	\$525	\$345
17.52	Application for approval of a vaporiser	\$525	\$345
17.66	Application for approval of a burner	\$525	\$287.50

### Extensions

Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
8.1	Application for an extension of a location compliance certificate (class 1 to 5 substances)	\$525	\$115
13.41	Application for an extension of a location compliance certificate (class 6 and 8 substances)	\$525	-
17.91	Application to increase the duration of a compliance certificate for a stationary container system	\$525	\$345

### Exemptions

Under the HSNO Act, the following fees currently apply when seeking an exemption from the regulator for specified regulatory requirements. However, the *Health and Safety at Work Act* provides the regulator with the ability to exempt a person or class of persons from compliance with any regulatory requirement; this means that exemptions will not necessarily be limited to the provisions below. It is important that there is a consistent approach to granting exemptions, including what cost should be attached to applications. MBIE intends to do further work on this in 2016.

Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
11.40	Application for reduced separation distance	\$870	\$345
15.4	Application for variation of a design to withstand maximum developed pressure	\$870	\$230



Regulation	Activity	Proposed Fee (\$NZ – GST incl.)	Current Fee Effective from 01/10/2010 (\$NZ – GST incl.)
15.18	Exemption from requirement to obtain a pre-commissioning certificate	\$259	\$115
15.39	Exemption of clearance of imported cylinder fittings	\$259	\$115
16.44	Exemption from requirement for fire-fighting facilities for LPG tank wagons with capacity of 12,000L or greater	\$870	\$500
17.39	Application not to remove a disused below ground stationary tank	\$525	\$161
17.41	Application to vary fire-fighting facility requirements	\$525	\$500
17.99	Application to reduce capacity for secondary containment for surface containers over 450 litres	\$525	\$345
17.102	Application to increase the aggregate capacity of stationary containers in a group within a secondary containment system for the purposes of regulation 17.101(5)	\$870	\$575
17.103	Application to increase the aggregate capacity of stationary containers in a group within a secondary containment system for the purposes of regulation 17.101(3)	\$870	\$575
Clause 35, Schedule 1	Compliance plan for stationary container system	\$870	\$230

### Are the proposed fees for the same services?

Mostly. We are proposing to transfer the services that WorkSafe NZ provides under the HSNO Act to the hazardous substances regulations, with the following changes:

Proposed change to status quo	Reason for proposed change
Removing the one-year authorisation option for compliance certifiers, retaining only the five-year option	A five-year authorisation is cost-effective for applicants and provides certainty for their activities. It is also cost-effective for the regulator
Variations to the conditions of a compliance certifier authorisation at the time of renewal are charged the same as a standard renewal	This is cost-effective for the applicant and reflects the actual cost of this type of application
Removal of the maintenance fee	The current maintenance fee covers workshops, technical support, and a monthly newsletter for compliance certifiers, as well as maintenance of the compliance certificate



Proposed change to status quo	Reason for proposed change
	<p>database and compliance certifier register</p> <p>The proposed fee for new compliance certifier authorisations and renewals includes the cost of maintaining the compliance certificate database and compliance certifier register</p> <p>Based on the principle that fees should be tied to specific and identifiable services, it is more appropriate that the provision of technical advice and the publication of newsletters be funded by the Working Safer levy. More appropriate means of funding the workshops will be considered</p>
Replacement of authorisation as a periodic tester with authorisation as a test station	This reflects new requirements in the exposure draft. It lessens the burden on industry by allowing a cylinder test station to gain authorisation, rather than individual testers
Addition of an audit, to be conducted at least every four years on a cost-recoverable basis, with a provision for audits exceeding eight hours	This is consistent with Government decisions in July 2013 requiring mandatory auditing of compliance certifiers on a cost-recoverable basis
Addition of application to extend a location compliance certificate for class 6 and 8 substances	This reflects new requirements in the exposure draft, ensuring more consistency with controls for class 1-5 substances
Removal of application for a “time waiver” to allow an application for a compliance plan	The time limit for application for a compliance plan has been removed from the exposure draft. This removes the administrative burden on applicants and the regulator in assessing compliance plan applications

### **How did we calculate the proposed fees?**

WorkSafe NZ calculated the proposed fees based on current costs and according to the Treasury’s guidelines for public sector fee setting. In calculating the proposed fees, WorkSafe NZ considered the time taken to process the various applications based on:

- previous data for the same or similar processes
- the time spent by the most appropriate staff member
- average pay rates for staff members
- an annual rate of inflation of 2.5 percent for 2016 to 2020.

Applicants derive a private benefit from WorkSafe NZ’s services. For example, once authorised, compliance certifiers receive the benefit of providing a chargeable service. Further, businesses



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seeking exemptions are doing so due to their specific circumstances. As such, there is no basis to discount the cost as with the current fees under the HSNO Act. It is appropriate that these costs should be borne by the individuals and organisations which benefit from the service.

### **Questions**

1. Are the proposed fees set at the right level for applications for:
  - the authorisation of individuals and organisations?
  - the approval of equipment?
  - the approval of extensions?
  - the approval of exemptions?
2. Are the proposed fees set at the right level for conducting an audit?
3. Do you have any feedback on any aspect of the proposed fees?