

Test Certifiers Workshop

June 2017



**EVERYONE WHO GOES TO WORK
COMES HOME HEALTHY AND SAFE**

WELCOME

Opening

- Welcome and agenda
- Introductions
- Housekeeping

1 - NEW REGULATIONS

WORKING TOGETHER ON HEALTH AND SAFETY



HAZARDOUS SUBSTANCES REFORMS

WORKSAFE
NEW ZEALAND | MAHI HAUMARU
AOTEAROA



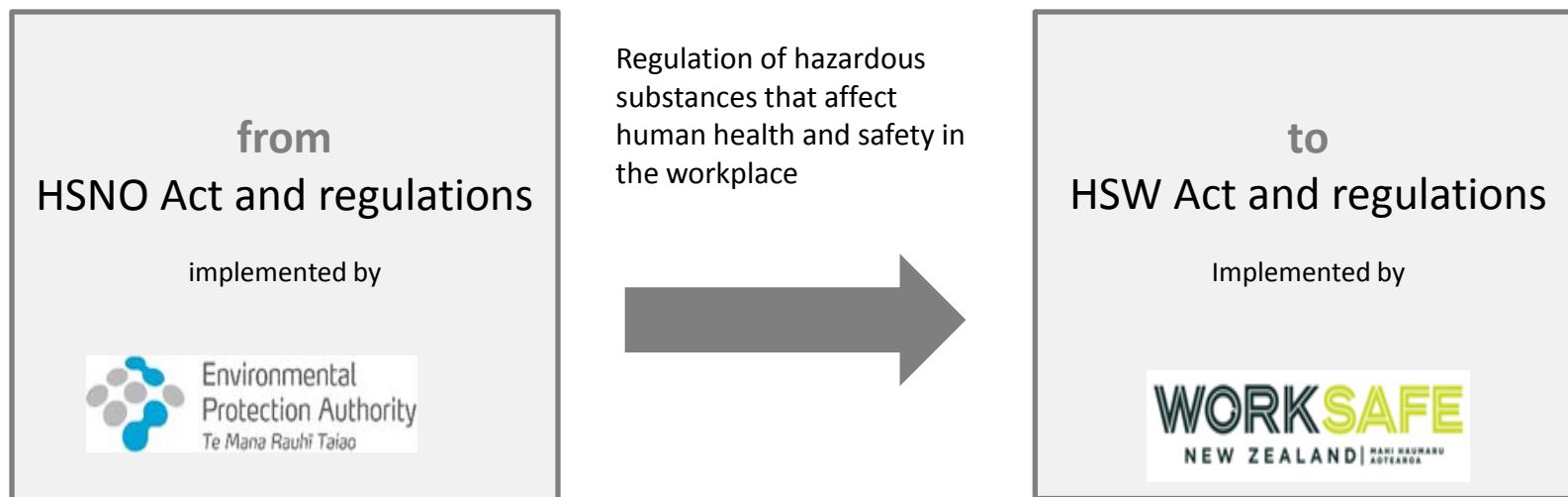
REASON FOR THE REFORMS

- Independent Taskforce on Workplace Health and Safety
- Complex legislation
- Approximately 150,000 businesses use, handle, manufacture or store hazardous substances.

Key outcomes being sought:

- Greater **certainty** and **clarity**
- Improved **work-related health** outcomes
- Better hazardous substances **risk management**

KEY REGULATORY CHANGES



- Introducing: Health and Safety at Work (Hazardous Substances) Regulations
- Changing: Hazardous Substances and New Organisms Act (HSNO)
- Introducing: Safe Work Instruments (WorkSafe)
- Introducing: EPA Notices.

TIMELINE

- June 2017 Hazardous Substances regulations “made”
- Early July 2017 HS Regulations publically available (www.legislation.govt.nz)
- August 2017 EPA Notices publically available (www.epa.govt.nz)
- December 2017 HS Regulations come into force
- December 2017 Remaining EPA Notices come into force

EPA NOTICES

- Importers and Manufacturers Information (in force)
- Enforcement Officer Qualifications (in force)
- Minimum Degrees of Hazard
- Classification
- Labelling
- Safety data sheets
- Packaging
- Disposal
- Hazardous Property Controls
- Forms and Information

TRANSITIONAL PROVISIONS

- HS Regulations contain series of transitional provisions covering:
 - Existing test certifier approvals
 - Existing test certificates
 - Existing controlled substance licences
 - Existing approvals for reduced separation distances and compliance plans

SAFE WORK INSTRUMENTS

- New subordinate legislation
- Can be used only where specifically allowed for in HSWA Regulations
- Two types for Day 1:
 - Replacing some HSNO Codes of Practice
 - Continuing some workplace controls set by EPA
- A range of uses including:
 - prescribing technical matters
 - setting additional or varied controls
 - providing alternative means of complying with regulations
 - supporting the health and safety regulatory framework

STRUCTURE OF THE REGULATIONS

STRUCTURE OF THE HSW(HS) REGULATIONS

- Part 1: Application
- Part 2: Labelling, signage, safety data sheets, and packaging
- Part 3: General duties relating to risk management
- Part 4: Certified handlers and supervision and training of workers
- Part 5: Emergency management
- Part 6: Compliance certification
- Part 7: Controlled substance licences
- Part 8: Controls applying to all class 1 to 5 substances

STRUCTURE OF THE HSW(HS) REGULATIONS

- Part 9: Class 1 substances
- Part 10: Class 2, 3, and 4 substances
- Part 11: Controls relating to adverse effects of unintended ignition of class 2 and 3.1 substances
- Part 12: Class 5 substances
- Part 13: Class 6 and 8 substances
- Part 14: Fumigants

STRUCTURE OF THE HSW(HS) REGULATIONS

- Part 15: Gases under pressure
- Part 16: Tank wagons and transportable containers
- Part 17: Stationary container systems
- Part 18: Laboratories
- Part 19: Tracking hazardous substances
- Schedules – includes transitional provisions (Sch 1) and fees (Sch 2)

OVERVIEW OF SOME OF THE MAIN CONTROLS

DRAFT

KEY CHANGES

- Person in Charge – generally duty now on the PCBU
- Secondary containment – now specified in each Part
- Standards are dated – regular updates required to maintain currency. Regs have been updated for latest version of standards
- Public places and protected places replace HILU and LILU
- Corrected some technical inaccuracies; clarified various areas
- Items in Codes or EPA decisions (inc Transfer Notices) brought into the new regulations

KEY CHANGES

- Safety Data Sheets
- Inventory
- Information, instruction, supervision and training
- Emergency preparation
- Labelling
- Signage
- Safe Work Instruments
- Stronger Compliance Certifier framework

KEY CHANGES

- Certified Handlers (Approved Handlers)
- Location compliance certificates
- Retail Fireworks
- Laboratories
- Tracking highly hazardous substances
- Waste Hazardous Substances

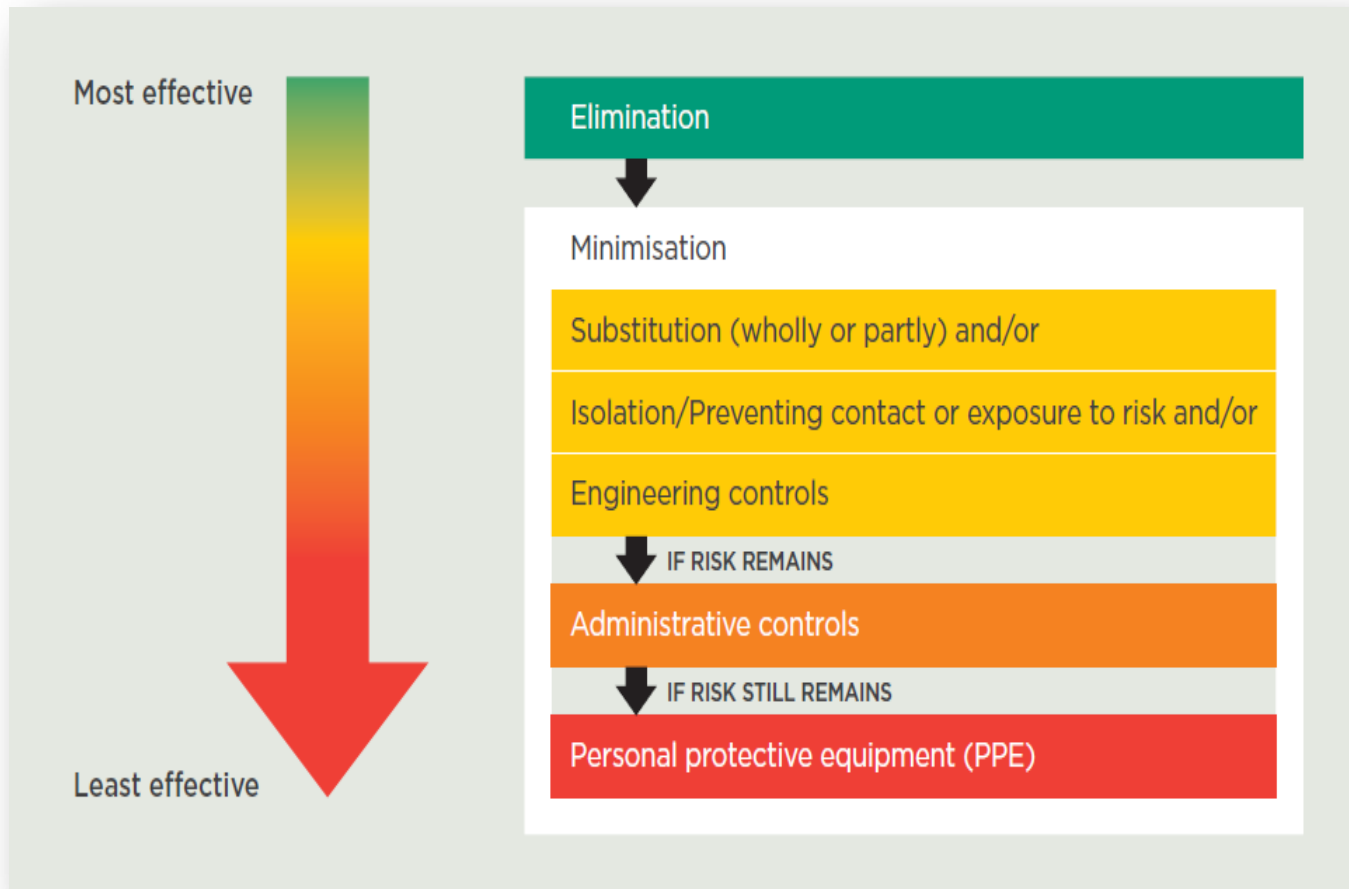
KEY CHANGES

- Authorisation of compliance certifiers
 - Test certifiers will become compliance certifiers
 - WorkSafe can authorise organisations
 - Mandatory performance standards
 - Audits of compliance certifiers at least every four years

RISK MANAGEMENT AND REVIEWING CONTROLS

- Identify, assess and review hazards – controls in place
- Identify remaining hazards after controls in place
- Eliminate the risk if reasonably practicable
- Minimise any remaining risks
- Follow hierarchy of control measures

HIERARCHY OF CONTROL MEASURES



THE REGULATIONS, PART BY PART

DRAFT

PART 1: APPLICATION

- Sets out how the regulations apply to:
 - The Defence Force
 - Hazardous Waste – use, storage and handling
- Provision of exemptions for
 - Transport by land, sea, or air
 - Used for motive power or within a fuel system
 - Fuel gases
 - Transshipment of Class 1 substances

PART 2: LABELLING, SIGNAGE, SAFETY DATA SHEETS, AND PACKAGING

- General duty of PCBU to display signage
- Signage requirements for transit depots
- Duty of PCBU to maintain signage
- Duty of PCBU to obtain and provide access to safety data sheets
- Duty of PCBU relating to packaging of decanted or transferred substances

PART 3: RISK MANAGEMENT

- Duty to keep hazardous substances inventory
 - Specifies requirements to be on inventory
- Inventory not required at transit depot
- Manage risks from hazardous substances
 - Complements requirements in “General Risk Regs”
- Duty of PCBU to review control measures
 - Under specified circumstances (e.g. notifiable event, every 5 years)
 - plus circumstances in reg 8 of General Risk Regs

PART 4: HANDLERS, SUPERVISION & TRAINING

Training of Workers

- Applies to every worker using, handling, manufacturing or storing
- PCBU must ensure information provided
- PCBU must ensure training and instruction
- PCBU must keep records of training and instruction
- Reg 9 of General Risk Regs apply

PART 4: HANDLERS, SUPERVISION & TRAINING

Supervision of Workers

- PCBU must provide supervision. Supervision must reflect knowledge and experience of the worker
- Applies to:
 - workers using, handling, manufacturing or storing
 - Workers involved with plant for the use, handling, manufacture or storage
 - Workers likely to be exposed to hazardous substances
- Reg 9 of General Risk Regs apply

PART 4: HANDLERS, SUPERVISION & TRAINING

Certified handler

- Certified handler required for specific substances – those requiring controlled substance licence, plus 6.1A and 6.1B substances
- Certified handler NOT required for Classes 2, 3, 4 or 5 substances
- Competency requirements specified
 - Additional to requirements for supervision and training
 - Includes knowledge of procedures “at the workplace”
- Full competency assessment required for renewal
- Certain persons exempt from the requirements to be certified handler

PART 5: EMERGENCY MANAGEMENT

- Duty of PCBU to provide fire extinguishers
- Capability of fire extinguishers [at least 30B]
- Requirements for Emergency Response Plans – “reasonably foreseeable”
- Fire and Emergency New Zealand may review ERPs and make written recommendations
- Testing of ERPs
- Secondary containment covered in each Part of the regulations

PART 6: COMPLIANCE CERTIFICATION

- Applies to “a person”
 - May be an individual
 - Not an individual (i.e. organisation) – if accredited by IANZ 17020
- To be granted an authorisation (individual) must
 - Have qualifications (knowledge, experience)
 - Be fit and proper
- For renewals: undergo a full assessment

PART 6: COMPLIANCE CERTIFICATION

- To be granted an authorisation (not an individual) must
 - An individual undertaking functions is qualified (same provisions)
 - IANZ Accreditation
 - Officers and individuals are fit and proper
 - No reasonably foreseeable conflict of interest
- For renewals: undergo a full assessment

PART 6: COMPLIANCE CERTIFICATION

- Register of compliance certifiers. Will include:
 - Contact information
 - Scope and conditions of authorisation
 - Any disciplinary matters
- Compliance certifier must:
 - Notify change in contact information
 - Change in relation to individual undertaking functions (not an individual)

PART 6: COMPLIANCE CERTIFICATION

- Complaints and concerns - more explicit disciplinary provisions and process
- Compliance certifier – subject to audits and mandatory performance standards
- Provision for WorkSafe to employ or engage compliance certifiers

PART 6: COMPLIANCE CERTIFICATION

- Compliance certificates:
 - Requirement for WorkSafe to maintain a register
 - Compliance certifier must enter certificates into the register
 - Compliance certifier must not issue certificates where there is a conflict of interest
 - Compliance certifier may vary a compliance certificate to correct minor errors
- Investigation of complaints and concerns about certificates

PART 7: CONTROLLED SUBSTANCE LICENCE

- Required for certain explosives, VTAs and fumigants
- Provisions unchanged [age, competence, fit and proper, work need]
- Fit and proper requirements fundamentally unchanged
- Certain persons exempt from the requirement to hold CSL
- Suspension / investigation process more explicit
- Requirement to maintain register of CSL holders

PART 8: CLASSES 1 TO 5 SUBSTANCES

- General certification requirements
 - 12 months or
 - 36 months for < 300 kg LPG
- Extension for location compliance certificate – to 36 months maximum
- Exemptions for:
 - Tactical policing
 - Training explosive detector dogs
 - Certain alcoholic beverages

PART 9: CLASS 1 SUBSTANCES

- Provisions substantively unchanged
- Substances requiring certified handler unchanged
- CSL requirement explicit , including provisions for supply
- Some subtle changes, e.g. the provisions for containers securing fireworks now extended to a building
- PCBU has some duties previously held by the approved handler e.g. detonation and deflagration, pyrotechnic displays
- Record of outdoor pyrotechnic incidents corrected – to be kept for 5 years

PART 10: CLASS 2, 3, AND 4 SUBSTANCES

- Provisions substantively unchanged.
- Location compliance certification involves information, training and instruction
- No approved handler requirements

PART 11: CLASS 2 AND 3.1 SUBSTANCES

- Derived from Schedule 10 of Gazette Notice 35
- Provisions substantively unchanged.
- Separation distances unchanged
- Changes in wording e.g. Type A, B, C, D store; Type 1, 2, 3, workroom; protected places / public places
- Clause 33 provision carried forward as an exemption, but some subtle changes

PART 12: CLASS 5 SUBSTANCES

- Provisions substantively unchanged. Address:
 - Controlling unintended ignition
 - PPE
 - Controlling spills
 - Establishing HSL and requirements for HSL
 - Secondary containment

PART 13: CLASS 6 AND 8 SUBSTANCES

- Derived primarily from the HSNO 6, 8 and 9 Controls Regs + VTA Transfer Notice
- New requirements for storage at / not located at a HSL
- Location compliance certificate for 6.1A, 6.1B, 6.1C, 8.2A, 8.2B substances. Certificate for 36 months. Later commencement date
- Requirements for stores and storage cabinets
- Separation distances to protected places / public places
- 1080 importation

PART 13: CLASS 6 AND 8 SUBSTANCES

- Matters to be certified for locations
 - Notification
 - Certified handler (if applicable)
 - Information / Instruction / Training
 - Storage
 - Separation distance
 - Segregation
 - Site plan
 - Incompatibles
 - PPE
 - Signage
 - Emergency management
 - Secondary containment

PART 14: FUMIGANTS

- Provisions based on the:
 - Fumigants Transfer Notice (2004)
 - Methyl bromide reassessment
 - Individual Part 5 HSNO approvals (e.g. ripper / methyl iodide)
- Sets out:
 - Certified handler and CSL provisions
 - Notification and signage
 - Operational requirements
 - Record keeping
 - Specific provisions for specific substances
- Part 13 and other parts apply to Part 14

PART 15: GASES UNDER PRESSURE

- No longer “Compressed Gases”
- Generally unchanged with the following exceptions:
 - Pre-commissioning waiver becomes **Exemption from design verification, pre-commissioning and import clearance**
 - Periodic testers become **Test stations with specific authorisation by WorkSafe based on IANZ/NZU accreditation**
 - **New regulation authorises ‘marking’ (by test stations) of one off LAB numbers and of LAB SP numbers**

PART 16: TANK WAGONS AND TRANSPORTABLE CONTAINERS

- Provisions substantively unchanged
- Note: Previous ability to issue compliance plans for tank wagons has not been carried over – will require an exemption

PART 17: STATIONARY CONTAINER SYSTEMS

- Provisions substantively unchanged. Most technical specifications remain the same for
 - Engineering and performance
 - Design, construction and installation
 - Repair and maintenance
- Clarity is being provided on validity period for stationary container compliance certificate
- Can continue to issue compliance plan for “existing” stationary tanks (i.e. those in use pre July 2006)

PART 18: LABORATORIES

- No longer exempt laboratories
- Laboratories that use hazardous substances in
 - Research and development
 - Analytical testing
 - Teaching
- Provisions around sale of substances
- Requirements fundamentally unchanged for:
 - Design of laboratory
 - Access to laboratory
 - Handling and storage
 - Record keeping

PART 19: TRACKING HAZARDOUS SUBSTANCES

- Concept is the same
- Fewer substances (e.g. not 6.1C)
- Introduces concept of “competent person”
 - A certified handler
 - Person who has received information, instruction and training
- Requirement to record the “approved handler” replaced with “competent person”

TYPES OF COMPLIANCE CERTIFICATES

COMPLIANCE CERTIFICATES

- As those under HSNO, except:

NEW location compliance certificate for class 6 and 8 substances

and

NO LONGER required for:

- Approved handler [Classes 2 to 5 substances]
- Packaging
- Retail fireworks testing
- Transfer of explosives in darkness

APPLICATIONS TO WORKSAFE

Generally from Gazette Notice 35

APPLICATIONS TO WORKSAFE

Application Type	Same/Changed
Burners	Same
Dispensers	Same
Vaporisers	Same
Extension LTC	Same
Extension SCTC	Same
Compliance Plans	Same
Disused Underground Tanks	Same
Secondary Containment variations	Same

APPLICATIONS TO WORKSAFE

Application Type	Same/Changed
Waiver Pre-commissioning *	Changed
Waiver Fire Fighting	Changed
Reduction separation distance	Changed

- Same – approvals are now called authorizations instead
- Changed – now an exemption; for 5 years only; more detailed process
- * See comments Part 15

HSNO AND TEST CERTIFICATION

HSNO AND TEST CERTIFICATION

- HSNO continues to be the responsibility of EPA
- Test certification regime removed from HSNO
- HSNO no longer contains provisions for approval of test certifiers

BUT

- Certification of retail fireworks remains under HSNO. Compliance certifiers may be involved, via an agreement with the EPA.

AND

Some non-workplaces will require “certification” under HSNO

NON WORKPLACES AND HSNO CERTIFICATION

- Some non-workplaces will require “certification” under HSNO
 - location (e.g. LPG installations > 300 kg; below 300 kg compliance plaque approach)
 - approved handler where required under HSW (HS) Regs
 - SCS for domestic oil burning installations [> 2,500 L]

CLASS 9 SUBSTANCES

- EPA are implementing alternative qualification requirements for Class 9 pesticides [agrichemicals and urban pest management chemicals] that currently require approved handler [e.g. Growsafe certification / unit standards]

HSNO ENQUIRIES

For queries on HSNO reform:

- Email hsreform@epa.govt.nz.
- Phone 0800 429 7827

QUESTIONS

2 - PERFORMANCE STANDARDS

Performance standards

– George Hewitt

- Definition
 - “information and process requirements that a compliance certifier must comply with when performing the functions of a compliance certifier”

Performance standards

– List

- Locations test certificates for classes 2-5, 6 and 8.
- Stationary container systems
- Approved Handler Test Certificates – Agrichemicals
- Approved Handler Test Certificates – VTAs
- Approved Handler Test Certificates – Fumigants
- Approved Handler Test Certificates – Class 1 explosives
- Pyrotechnic displays test certificates
- Location test certificates for Class 1 explosives
- Design and construction of magazines
- Service and record keeping

Performance Standards

- Key features
 - Currently being drafted
 - Intention is to specify a standard (which can be audited against)
 - Based on existing HSNO performance standards
- Consultation process
 - Draft
 - Pre-consultation/Consultation
 - Final
- General Q&A

3 - LIAISON ROLE

Liaison role – Kate Studd

- Liaison role
 - Guidance, technical/legal clarifications
 - Test certifier update
 - Test certifier workshops and training
- Application process
- General Q&A

4 – SAFE WORK INSTRUMENTS

SWIs – George Hewitt

- Differences between HSNOCOPs and SWIs
- 12 SWIs
- 3 ACOPs
- Test Certifier Update articles

Safe Work Instruments

- To broadly provide “hooks” as per the code of practice “hooks” in the HSNO legislation.
- Definition Section 227
 - “The purposes of safe work instruments are to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.”
- Additional (new requirement) and modified (varied, replaced, deleted or alternative means of complying with a requirement) controls can be added via an SWI

Safe Work Instruments

- Properties
 - SWI is more focussed than ACOP
 - Much more precise
 - Does not have the broader HSNO COP capability
 - Guidance/educative material not included i.e. normative – not informative
 - Publicly available – developed by the regulator

Safe Work Instruments

- HSNOCOPs
- Encompassed by regulations
- 12 SWIs
- 3 ACOPs (at least)
- Guidance

SWI list

1. Polythene above ground stationary tanks for diesel fuel
2. Management of pre-2004 stationary container systems
3. Filling of below ground petrol tanks by pumping
4. Design and construction of above ground stationary tank to ULC-ORD-C80.1-2000
5. Action taken in respect of disused below ground tanks on farms
6. Markings for pipework connected to above ground stationary tanks
7. Above ground stationary tanks with integral secondary containment
8. Specifying ISO 11118 for non-refillable cylinders
9. Storage of explosives
10. Thermoplastic stationary tanks
11. Stationary container systems connected to a generator set
12. Rotationally moulded polyethylene storage tanks for non-flammable hazardous substances

Safe Work Instruments

- HSNOCOP 13:
 - Essential standards only
 - Validity period to be a determination
- General Q&A

5 – CAR TEAM / AUDITING

AUDITING



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AUDITING

An audit is

- A mechanism to ensure a certifier is complying with legal requirements and processes
- An opportunity for the regulator to provide advice and assistance to the certifier

An audit is not

- The check that is completed as part of the compliance certifier's authorisation renewal process

FREQUENCY

- At least once every 4 years
- Mandatory
- May 2018 first audits
- Reactive audits arising from complaints still take place

Compliance certifiers with multiple approval types may require audits more frequently than 4 yearly.

May not be possible to cover all types in a single audit

RISK BASED APPROACH

Factors

- Performance
- Complaints
- Approval types

TYPES

Types of Audit

- Desktop
 - carried out by WorkSafe and/or contractor engaged as an auditor by WorkSafe
- Compliance certifier's site visit
- Certificate holder (PCBU) site visit

May be a blend of audit types depending on quantity and scope of approval types

AUDITOR

- WorkSafe auditors
 - Senior Advisors CAR (Audits and Investigations)
 - Inspectors
- External contractors
 - an auditor engaged by WorkSafe
- Audits will be lead by CAR Team (Audits and Investigations)

AUDIT OUTCOMES

Four findings from an audit:

1. Major non-compliance
2. Minor non-compliance
3. Area of concern
4. Opportunity for improvement

Findings of audits will be used to determine future audit frequency

NON-COMPLIANCE

Definition: Non-fulfillment of a requirement

- Certifier is non-compliant when they do not fulfill what is required by:
 - the Act
 - Regulations
 - Safe Work Instrument (SWI)
 - Performance Standard
 - their own documented processes and procedures

NON-COMPLIANCE

Major and Minor Non-Compliance

- The compliance certifier can prioritise corrective actions
- The compliance certifier can be clear that major non-compliance needs to be corrected first and does not spend time addressing the less urgent minor non-compliances
- A corrective action plan would be issued to the certifier if non-compliances are found on audit
 - re-training staff
 - updating forms
 - improving a process

PCBU SITE AUDITS

- Role of auditor is to
 - review processes and procedures of the certifier
 - to establish how the certifier made their decision to issue the certificate
- Auditor is assessing the performance of the certifier in issuing compliance certificates
- Assessment will be done by reviewing and assessing the certifier's documentation, records, file notes

PCBU SITE AUDITS

Scenario:

- Where auditor is on a PCBU site and notes that the quantities of a substance are above those permitted on a certificate
 1. If certifier records show quantity was under the limit on the day of their assessment it is not a non-compliance
 - Dealt with by the Inspectorate
 - Compliance certifier is not expected to rectify this situation
 2. If certifier has no records to demonstrate assessment of quantities, or quantity over that allowed – is an audit non-compliance

Contact

For more information contact:

car.compliance@worksafe.govt.nz

6 - WHAT'S COMING UP?

Upcoming projects

- WorkSafe projects on preparing test/compliance certifiers for the new regulations
 - Two more workshops in 2017
 - Three in first half of 2018
 - Class 6 & 8 training
 - Regular test certifier updates

Upcoming projects – All

- WorkSafe projects on guidance
 - Guidance and education team
 - Investigation into training for test certifiers being aligned with national standards
- New registers for certifiers and certificates

Upcoming projects – All

- VTA and Agrichemicals workshops
 - Simon
- Class 6 & 8 locations training
 - Kate
- General Q&A

7 – GENERAL BUSINESS

General Business – All

- Round up
- Final questions