



HEALTH AND SAFETY AT WORK (HAZARDOUS SUBSTANCES) REGULATIONS 2016 (CONSULTATION).

Submitter: Horticulture New Zealand

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1. Introduction

Horticulture New Zealand (HortNZ) represents 5,500 commercial fruit, vegetable and berry fruit growers. HortNZ provides strategic direction and focus, have strong relationships with our affiliated product groups and associations and work at both a national and regional level across a range of interest areas, including biosecurity and food safety.

New Zealand's horticulture exports have grown from \$NZ100 million in 1980 to \$NZ2.5 billion in 2015. A total area of 100,000 hectares is used for horticulture production and the industry employs 50,000 people in eight key growing regions.

2. Executive Summary

HortNZ submits as follows:

- HortNZ supports the purpose of the proposed Health and Safety at work (Hazardous Substances) Regulations, to protect the safety of workers and people in the workplace and the government's vision to improve New Zealand workplace health and safety performance.
- HortNZ's view and submission is that the process to draft this proposed regulation has been completed without any meaningful consultation, or input, from industry. HortNZ therefore requests that this process is re-commenced to permit all interested parties that opportunity to fully analyse the proposals and make appropriate submissions.

- HortNZ notes that the proposals for the management of hazardous substances presented by MBIE establishes a framework that relies on regulatory control, monitoring, fines and sanctions, while lacking mechanisms that support a systems approach and cooperation between industry and the regulator. Over the past 25 years, the New Zealand horticulture industry has implemented a sophisticated and effective management system for agrichemicals. The proposed regulations largely ignores this framework. HortNZ asks and submits that horticulture's management system is recognised.
- HortNZ supports options 1 but does not support option 2.
- HortNZ requests the inclusion of official recognition, in the form of accreditation, for the industry training and assurance programmes that meet regulatory requirements.
- HortNZ requests the establishment of a regulatory framework which recognises and accredits training and assurance programmes (such as the industry Good Agricultural Practice programmes) that meet the requirements of the Hazardous Substances Regulations.
- HortNZ does not support proposal 4.3(7) which requires refresher training only if "the PCBU considers refresher training to be necessary". HortNZ recommends a minimum interval of five years for retraining, with the ability to set an alternative interval where justified through risk assessment.
- HortNZ does not support the proposal to define a hazardous substance location as an area where a substance of class 2, 3, 4, 5, 6, or 8 is located for more than 8 hours (if not subject to tracking), or for 2 hours (if subject to tracking).
- HortNZ requests that threshold quantities for agrichemicals that are stated in regulation are adopted from the New Zealand Standard NZS8409: Management of Agrichemicals (Appendix L1 - Table 1).
- HortNZ does not agree with the threshold quantities set out in draft regulation 13.41.
- HortNZ requests a greater level of recognition of industry assurance programmes that cover the management of agrichemical storage, where the outcomes are equivalent to regulation.
- HortNZ supports, in principle, the inclusion of fines for infringement offences, rather than requiring the regulator to pursue a prosecution of an individual, or PCBU, in order to impose a penalty.
- HortNZ requests clarification for who is accountable and the difference between an "individual" and a "PCBU" in relation to infringement offences.
- HortNZ requests the inclusion of transitional measures to ensure that businesses are not required to invest in infrastructure, or establish new procedures, to meet parts of these interim regulations, or regulations that may change within two years of the enactment of these regulations.

- HortNZ is concerned at the removal of the New Zealand Standard: NZS8409 as a recognised code of practice for the management of agrichemicals. HortNZ will seek recognition of NZS8049 as a “Safe Work Instrument” in the future

3. The Consultation Process

HortNZ is disappointed by the length and timing of the consultation period, from 18 December 2015, to 1 March 2016. This timing has provided insufficient time to research and assess the extensive and detailed proposals presented in the consultation documents, particularly as much of the consultation period ran over the Christmas break.

The information presented in this proposal is substantial (525 pages) and complex. HortNZ is disappointed that it was issued without supporting information and explanations. HortNZ appreciates that the Ministry for Business Innovation and Employment provided a two day consultation meeting, on 18 & 19 February, but this was unacceptably close to the deadline for feedback, on 1 March.

Further, HortNZ understood that the draft regulations were a “lift and shift” of existing regulations, largely from HSNO. It was not until we received feedback from the workshops that we became aware of the extent to which the proposals contained new and modified requirements.

HortNZ is aware that many other industry organisations are also concerned about the consultation process and that many have provided only a basic level of feedback, or simply missed the deadline for feedback.

HortNZ notes that MBIE has invited feedback on only a narrow range of topics included in the proposed regulations and has not sought feedback on a number of proposals that are new, or differ from existing regulations.

HortNZ has elected to provide feedback on a number of these requirements, and request an opportunity to discuss and provide further feedback before the conclusion of this consultation process.

It is HortNZ’s view and submission that the process to draft this proposed regulation has been completed without any meaningful consultation, or input, from industry. HortNZ therefore requests that this process is re-commenced to permit all interested parties that opportunity to fully analyse the proposals and make appropriate submissions.

It is estimated that there are over *15,000 business owners and workers that handle and use agrichemicals in the horticulture industry.

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

This submission focusses largely on hazardous substances that are agrichemicals, as these are the main substances (products) covered by these proposals, which are used in the horticulture industry.

Agrichemicals are stored and handled on thousands of horticulture sites nationwide, and are used by tens of thousands of people. The scale and diversity of agrichemical use lends itself to a systems

approach, with clear roles assigned with, or between, industry organisations and the regulator.

HortNZ is concerned that the proposals for the management of hazardous substances presented by MBIE establishes a framework that relies on regulatory control, monitoring, fines and sanctions, while lacking mechanisms that support a systems approach and cooperation between industry and the regulator.

Over the past 25 years, the New Zealand horticulture industry has implemented a sophisticated and effective management system for agrichemicals. This system covers the health and safety of workers, pest and disease control, biosecurity, food safety and protection of the environment.

This system is highly structured and includes risk assessment, research, standards, training, recording, monitoring (auditing) and improvement processes. Participation is high, with over 90% of horticulture businesses registered and audited through these industry programmes. The proposed regulations largely ignores this framework.

The current review of New Zealand's hazardous substances regulations is an opportunity to establish a highly effective framework that aligns industry programmes, with regulation. Doing this will enhance the reach and effectiveness of the management system for agrichemicals, leading to better outcomes for the health and safety of workers.

5. Approved Handler Certification

HORTNZ supports Option 1 – The removal of the requirement to have one or more workers certified as an approved handler — except for those substances requiring a controlled substance licence (explosives, vertebrate toxic agents and fumigants).

1. HortNZ believes that the “requirement for information, instruction, and training” required in Regulation 4.3, provides a more effective means to ensure that workers have the competence and knowledge to handle and use hazardous substances that are agrichemicals.
2. The Approved Handler certification system does not meet the range of needs for agrichemical certification that apply in the horticulture industry. It does not meet the standards for training and competency set by the market, nor is it recognised in Regional Council airplans, or for insurance cover.
3. HortNZ believes that the provision of training and certification for agrichemicals is effectively covered by industry through the GROWSAFE programme and other similar training programmes.
4. In addition to the above points, HortNZ agrees with the points relating to the Approved Handler system presented by the New Zealand Agrichemical Education Trust

HortNZ does not support Option 2

6. Training and certification

HortNZ supports the proposal for Regulation 4.3 which sets out a requirement for a PCBU to provide information, instruction, and training to every worker that uses, handles, manufactures, or stores hazardous substances in the workplace.

However, the proposal is vague about the curriculum and standards for training and assessment of competence that will meet the requirements of regulation, particularly where an individual, PCBU, or a non-accredited training organisation, is providing the training.

HortNZ requests the inclusion of official recognition, in the form of accreditation, for the industry training and assurance programmes that meet regulatory requirements.

HortNZ requests the establishment of a regulatory framework which recognises and accredits training and assurance programmes (such as the industry Good Agricultural Practice programmes) that meet the requirements of the Hazardous Substances Regulations.

HortNZ does not support proposal 4.3(7) which requires refresher training only if “the PCBU considers refresher training to be necessary”. Refresher training is a fundamental element of agrichemical training. HortNZ recommends a minimum interval of five years for retraining, with the ability to set an alternative interval where justified through risk assessment.

7. Storage of toxic (Class 6) and corrosive (Class 8) not located at a hazardous substance location.

HortNZ notes that there is no clear definition of a “Hazardous Substance Location”, or a Location Test Certificate (LTC).

HortNZ does not support the proposal to define a hazardous substance location as an area where a substance of class 2, 3, 4, 5, 6, or 8 is located for more than 8 hours (if not subject to tracking), or for 2 hours (if subject to tracking).

Storing, or holding agrichemicals, on a property prior to application is an operational necessity. The application of the agrichemical may be delayed for a number of reasons, including weather conditions, availability of equipment, etc. This proposal would subject growers to infringement notices and fines resulting from circumstances and factors that lead to a delay above the time limit, that are out of their control (e.g. the weather).

8. Duty to establish a hazardous substance location where Class 6.1A, 6.1B, 6.1C or 8.2A are present

The proposals include a wide range of threshold quantities that trigger standards for signage, location certification, etc. This is confusing and difficult to interpret, as there are many complex scenarios for hazard classification, quantity, storage times, etc, which trigger a range of controls.

HortNZ recommends that controls relating to agrichemicals should be set at a product level (not a

substance level) and that these controls should be stated on registered product labels, rather than in regulation.

9. Threshold quantities

A range of threshold quantities stated in the proposed regulations are taken from the standard that is applied largely in Australia.

HortNZ requests that threshold quantities for agrichemicals that are stated in regulation are adopted from the New Zealand Standard NZS8409: Management of Agrichemicals (Appendix L1 - Table 1).

HortNZ does not agree with the threshold quantities set out in draft regulation 13.41. Insufficient research has been undertaken to determine the appropriate threshold quantities stated in the proposal. The thresholds stated in 13.41 may capture a significant portion of horticulture businesses into a regulatory management system, requiring large numbers of businesses to register their storage facilities and undergo additional audits and monitoring.

For example: The threshold limit for a class 6.1A substance is set at 50kgs. Certain class 6.1A granular products are distributed in 15kg boxes, meaning that just four boxes of product would exceed the threshold. At a typical coverage rate, this quantity would treat a planted area of just over four hectares.

On the other hand, the threshold for 6.1C products, set at 1000kgs, is unlikely to capture any horticulture businesses.

Use of class 6.1A products may not be part of routine crop husbandry, but may be required from time to time, or in a crisis, as a plant protection measure.

This high level of management and oversight of agrichemical storage facilities duplicates the monitoring and auditing that is already undertaken by industry.

HortNZ requests a greater level of recognition of industry assurance programmes that cover the management of agrichemical storage, where the outcomes are equivalent to regulation.

10. Exemptions based on the area of a business

HortNZ does not support the proposals that include exemptions for “farms” of less than four hectares, including proposed regulations 13.31, 17.98, and Schedule 1.13.

HortNZ seeks a clear definition of a “farm” and requests that the definition clearly includes all primary production activities.

HortNZ does not support exemptions based on the area of an operation, as horticulture businesses operate on smaller land area (reflecting high productivity per hectare) than other farming types. Areas based thresholds capture a larger portion of horticulture businesses than other types of primary production businesses, regardless of its agrichemical management.

For example, the area threshold stated in proposed regulation 13.31 (which sets requirement for Hazardous Substance Location certification), could capture up to 40% of horticulture businesses, while exempting almost all pastoral farming businesses, regardless of their agrichemical management.

11. Fines and sanctions

HortNZ supports, in principle, the inclusion of fines for infringement offences, rather than requiring the regulator to pursue a prosecution of an individual, or PCBU, in order to impose a penalty.

However, the list of infringement offences and penalties is extensive, and the definition of who is accountable is unclear, creating uncertainty among workers and business owners. Also, we do not understand the difference between an “individual” and a “PCBU” in relation to infringement offences.

The level of fines for infringement offences are generally high, and in many cases excessive for relatively minor issues: Examples include:

- A fine of \$9000 for failing to have an inventory/ manifest of hazardous substances present in the workplace, is excessive.
- The fine for using a fire extinguisher (in an emergency) that is the wrong size (\$6000) is inappropriate.
- The fines for missing, or obscured signage (\$6000), is excessive.

12. Transitional matters

HortNZ notes that parts of these proposed regulations may be reviewed in the near future - possibly as soon as 2017. This review may result in changes to these proposed regulations after they are implemented.

HortNZ requests the inclusion of transitional measures to ensure that businesses are not required to invest in infrastructure, or establish new procedures, to meet parts of these interim regulations, or regulations that may change within two years of the enactment of these regulations.

13. NZS8409: Management of Agrichemicals

HortNZ is concerned at the removal of the New Zealand Standard: NZS8409 as a recognised code of practice for the management of agrichemicals. HortNZ will seek recognition of NZS8409 as a “Safe Work Instrument” in the future.

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