Summary of submissions

HAZARDOUS SUBSTANCES
SAFE WORK INSTRUMENTS

July 2018

New Zealand Government

WORKSAFE
NEW ZEALAND | MAHI HAUMARU AOTEAROA

CONTENTS

Purpose

This document summarises submissions on two proposed safe work instruments (SWIs), our response to that feedback, and the resulting changes made to the SWIs.

Executive summary

WorkSafe recently consulted on two proposed SWIs developed under the Health and Safety at Work Act 2015 (HSWA). These SWIs supplement the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations).

The *Health and Safety at Work (Hazardous Substances – Validity Periods of Compliance Certificates for Stationary Container Systems) Safe Work Instrument 2018* specifies alternative validity periods of compliance certificates for certain container systems for the purposes of regulation 17.92(1)(ca) of the Regulations.

The *Health and Safety at Work (Hazardous Substances – Specification of Design Standards for Refillable Cylinders) Safe Work Instrument 2018* specifies design standards for gas cylinders in addition to those listed in Schedule 21 of the Regulations for the purposes of regulation 15.8(1)(b) of the Regulations.

All SWIs should be read in conjunction with the Regulations and do not stand alone or independently of the Regulations.

The SWIs commence on 1 August 2018.

Background

Safe work instruments

SWIs are a tool provided for by section 227 of HSWA. They are a type of subordinate instrument (sometimes called tertiary legislation) used to support or supplement regulations. They have legal effect to the extent that they are referred to in the relevant health and safety legislation.

SWIs are developed by WorkSafe and approved by the Minister for Workplace Relations and Safety. They can define terms, prescribe matters, or make other provisions in relation to any activity or thing, including listing standards, substance controls and competency requirements.

Submissions summary

WorkSafe consulted on the proposed SWIs between 14 May 2018 and 28 May 2018. We notified business and social partners (the CTU and Business New Zealand), targeted stakeholders with an interest in the subject matter and over 12,000 stakeholders subscribed to our hazardous substances e-newsletter. The draft SWIs were also available to the general public on our website.

A total of 19 submissions were received. Submitters included industry representatives, businesses and members of the public. The submissions led to amendments to one of the proposed SWIs. These submissions and consequential changes to the SWIs are recorded in this summary.

Validity periods of compliance certificates

The *Health and Safety at Work (Hazardous Substances – Validity Periods of Compliance Certificates for Stationary Container Systems) Safe Work Instrument 2018* specifies alternative validity periods of compliance certificates for certain stationary container systems.

It revises an alternative means of compliance previously provided in Hazardous Substances and New Organisms Code of Practice (HSNOCOP) 13-2, *Management of Existing Stationary Container Systems up to 60,000 litres Capacity* under the Hazardous Substances and New Organisms Act 1996 (HSNO).

The SWI provides an alternative means of complying with the Regulations. Validity periods of compliance certificates can also still be determined in accordance with the standards listed in regulation 17.92(1)(a) of the Regulations or by the other means provided in that regulation. The SWI applies only to the stationary container systems specified in the Schedule of the SWI.

SUBMISSIONS SUMMARY

WorkSafe received 13 submissions on this SWI from three industry organisations, six companies and four individuals. Some of the submissions led to changes to the proposed validity periods of compliance certificates.

Several submitters requested an increase to the proposed validity periods of compliance certificates for double skin above ground stationary tanks, and an increase to the proposed validity periods of compliance certificates for single skin above ground stationary tanks with 110% secondary containment and a capacity not greater than 250,000 litres. Submitters also commented that newer tanks have lower risk. WorkSafe made changes to the SWI based on this feedback.

Several submitters noted a validity period of compliance certificates was not proposed for below ground tanks with a capacity not greater than 5000 litres containing diesel. WorkSafe made changes to the SWI based on this feedback.

A number of submissions queried the scope of the SWI. The SWI does not apply to stationary container systems with single skin above ground stationary tanks (not supplying a burner or stationary engine) with a capacity greater than 250,000 litres. We have not proposed validity periods for larger systems. We consider that it is appropriate for the validity periods of compliance certificates for these systems to continue to be determined in accordance with the standards listed in regulation 17.92(1)(a) of the Regulations, or by the other means provided in that regulation.

Some submitters queried the purpose of the SWI and why WorkSafe was changing the periods set out in the former HSNOCOP. When the Regulations commenced on 1 December 2017, HSNOCOP 13-2 (which previously provided alternative validity periods of compliance certificates for stationary container systems) ceased to have effect, as it referred to revoked regulations. Unless a SWI was made to continue the alternative means of compliance previously provided by HSNOCOP 13-2, only the default requirements for determining validity periods provided in regulation 17.92 would apply.

WorkSafe revised the periods previously set out in HSNOCOP 13-2 to specify periods that are both practicable for PCBUs and manage risk. For this reason, some periods specified in the SWI are shorter than those previously set out in HSNOCOP 13-2 due to a greater understanding of the risk and potential for incidents involving these systems. While a tank may have a long useful life, a stationary container system also includes the associated pipework and other fittings, which may need more frequent review than the tank.

Some submitters asked for guidance on how to monitor secondary containment. A SWI is a legislative instrument, and does not include guidance. Neither the Regulations nor this SWI set out guidance on monitoring, as the means of monitoring vary for each stationary container system. WorkSafe intends to review its guidance on stationary container systems. This will include guidance on monitoring secondary containment.

A submitter commented that since the SWI establishes additional requirements it should remove others. The SWI does not establish additional requirements but provides an alternative means of meeting requirements. It does not remove any other means for determining validity periods of compliance certificates as these are still available stationary container systems not specified in this SWI. Compliance certifiers are able to determine validity periods of compliance certificates in accordance with this SWI or the other means provided in regulation 17.92, as appropriate.

Some submitters commented that periods of up to 15 years are provided for in regulation 17.92(2). This regulation allows WorkSafe to determine validity periods of compliance certificates for individual stationary container systems and individual PCBUs. These periods are maximums. They do not apply generally, and the period determined by WorkSafe will depend on the individual system.

Some submitters requested intermediate validity periods to coincide with internal inspection schedules. The SWI sets does not allow for intermediate validity periods to provide certainty about which validity periods apply. Generally this SWI does not apply to larger tanks requiring internal inspection. The validity periods of compliance certificates for systems that include larger tanks are determined in accordance with the standards set out in regulation 17.92(1)(a).

Smaller tanks should not require shorter validity periods. The compliance certifier can issue a compliance certificate for the one year default period if it is more appropriate for a particular stationary container system. The compliance certifier can also determine validity periods in accordance with the other means provided in regulation 17.92 if applicable.

One submitter considered that more frequent certification could lead to greater risk. More frequent certification will not cause additional risk, as certification of stationary container systems must always be carried out safely.

Some submitters commented on the definition in the SWI of moveable stationary tanks. The definition of movable tank has not changed from the HSNOCOP 13-2, and clearly states that a movable tank is designed to be moved periodically.

Some submitters queried the meaning of 'other substances' in the table of validity periods. This has been altered to 'substances other than petrol or diesel'. Petrol and diesel are specifically mentioned because the requirements for them can vary for the purposes of this SWI. One submitter requested specific validity periods for stationary container systems containing toxic and corrosive substances. We note that HSNOCOP 13-2 did not set out specific validity periods for these substance classes and we do not consider it necessary to do so in this SWI.

One submitter commented on the inclusion of validity periods of compliance certificates for stationary container systems with tanks designed to particular standards. If industry wishes to discuss the approval of design standards for tanks not referenced in the relevant regulation (regulation 17.6), WorkSafe can provide advice on this, but that is outside the scope of this SWI.

CHANGES TO SWI

Following consultation, we have made the following changes to this SWI:

- We have specified validity periods of compliance certificates for stationary container systems with tanks installed below ground (not supplying a burner or stationary engine) with a capacity of below 5000 litres containing diesel. These are five years for stationary container systems that include tanks with secondary containment monitored at least annually, and two years for all other tanks.
- We have increased the validity period of a compliance certificate for stationary container systems with a single skin above ground stationary tank (not supplying a burner or stationary engine) with 110% secondary containment and a capacity not greater than 250,000 litres from three years to five years.
- We have increased the validity period of the first compliance certificate for stationary container systems with a new double skin above ground stationary tank (not supplying a burner or stationary engine) from five years to seven years. It remains at five years for subsequent compliance certificates.

Design standards for refillable cylinders

The *Health and Safety at Work (Hazardous Substances – Specification of Design Standards for Refillable Cylinders) Safe Work Instrument 2018* specifies design standards for refillable cylinders additional to those listed in Schedule 21 of the Regulations, for the purposes of regulation 15.8(1)(b) of the Regulations.

Under regulation 15.8 PCBUs may design, manufacture, import or supply a cylinder (other than a fire extinguisher) if its design complies with an applicable standard listed in Schedule 21 of the Regulations, or a relevant safe work instrument, such as this one.

SUBMISSIONS SUMMARY

A total of five submissions were received, from four companies and one individual. The feedback on this SWI was resolved by responding directly to submitters to address their concerns.

Some submitters requested the inclusion of standards already specified in Schedule 21. We directed submitters to the Schedule in these cases.

Some submitters requested the inclusion of standards that have been withdrawn by their publisher. In most cases, replacements are included in the Regulations, and we directed submitters to these.

One submitter requested the inclusion of guidance on labelling and packaging requirements, and on transportation rules. An SWI is a legislative instrument and does not include guidance. Guidance on labelling and packaging for manufacturers is available on WorkSafe's website.

Labelling and packaging rules for manufacturers are set out in Environmental Protection Authority (EPA) Notices, available on the EPA's website. Guidance on transporting dangerous goods sits under the Land Transport Rule: Dangerous Goods 2005, available on the New Zealand Transport Agency's website.

One submitter was concerned that the standards specified would be the only permitted standards. We clarified that the purpose was to specify additional standards to those specified in Schedule 21.

CHANGES TO SWI

No changes were required to this SWI following consultation.

Implementation

The SWIs will be published on our website.

The requirements provided in the SWIs come into effect on 1 August 2018.

Disclaimer

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