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Mahi Haumaru Aotearoa

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Website: <http://www.worksafe.govt.nz>

Contact phone: 0800 030 040

Contact address: PO Box 165 Wellington 6140 New Zealand

Health and Safety at Work (Hazardous Substances— Requirements for Specified Fumigants) Amendment Safe Work Instrument (No 2) 2022

This safe work instrument is made under section 227 of the Health and Safety at Work Act 2015 by the Minister for Workplace Relations and Safety, being satisfied that appropriate consultation has been carried out under section 227(3) of that Act.

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Schedule

New Schedule 2 inserted

Safe Work Instrument

1 Title

This is the Health and Safety at Work (Hazardous Substances—Requirements for Specified Fumigants) Amendment Safe Work Instrument (No 2) 2022.

2 Commencement

This safe work instrument comes into force on 23 September 2022.

3 Principal safe work instrument

This safe work instrument amends the Health and Safety at Work (Hazardous Substances—Requirements for Specified Fumigants) Safe Work Instrument 2017 (the **principal safe work instrument**).

4 Preamble amended

In paragraph (b) replace ‘the Schedule’ with ‘Schedule 1’.

5 Clause 3 amended (Overview)

(1) In clause 3, in paragraph (m) replace ‘the Schedule’ with ‘Schedule 1’.

(2) In clause 3, after paragraph (m), insert:

- (n) clause 18 modifies the soil condition requirements in regulation 14.26(2) of the Regulations (under regulation 14.26(3) of the Regulations) for fumigation using AFE-HFP:
- (o) clause 19 requires Tri-Form 80 to comply with specified regulations:
- (p) clause 20 modifies the notification requirements in regulation 14.7(2) of the Regulations (under regulation 14.7(4) of the Regulations) for fumigation using Tri-Form 80:
- (q) clause 21—
 - (i) modifies the signage requirements in regulation 14.10(1) of the Regulations (under regulation 14.10(4) of the Regulations) for fumigation using Tri-Form 80; and
 - (ii) specifies an alternative time by which a PCBU must ensure signs are removed, for the purposes of regulation 14.10(5)(b) of the Regulations, for fumigation using Tri-Form 80:
- (r) clause 22 specifies the maximum area of the application block, if Tri-Form 80 is applied, for the purposes of regulation 14.20(2)(c) of the Regulations:
- (s) clause 23 specifies requirements for the size of a buffer zone, under regulation 14.22(8) of the Regulations, for fumigation using Tri-Form 80:
- (t) clause 24 modifies the soil condition requirements in regulation 14.26(2) of the Regulations (under regulation 14.26(3) of the Regulations) for fumigation using Tri-Form 80:
- (u) Schedule 2 specifies the minimum buffer zone distances required by clause 23 for fumigation using Tri-Form 80, according to the application rate.

6 Clause 4 amended (Interpretation)

(1) In clause 4(1), definition of **site**, replace ‘the Schedule’ with ‘Schedule 1’.

(2) In clause 4(1), after the definition of **site**, insert:

Tri-Form 80 means Tri-Form 80, HSNO approval number HSR101451

7 Clause 6 amended (PCBU must erect signs – Tri-Form 60)

Replace clause 6(2) with:

(2) For the purposes of regulations 11 and 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h) must erect signs at every point of entry to the buffer zone that—

- (a) can be readily seen by any person approaching the buffer zone; and
- (b) state that fumigation is being carried out; and
- (c) identify the fumigant being used and state that it is toxic to humans; and
- (d) describe the general type of hazard associated with the fumigant; and
- (e) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

8 Clause 7 amended (PCBU must erect signs – Ripper range)

Replace clause 7(2) with:

(2) For the purposes of regulations 11 and 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h) must erect signs at every point of entry to the buffer zone that—

- (a) can be readily seen by any person approaching the buffer zone; and
- (b) state that fumigation is being carried out; and
- (c) identify the fumigant being used and state that it is toxic to humans; and
- (d) describe the general type of hazard associated with the fumigant; and
- (e) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

9 Clause 14 amended (PCBU must erect signs - AFE-HFP)

Replace clause 14(2) with:

(2) For the purposes of regulations 11 and 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h) must erect signs at every point of entry to the buffer zone that—

- (a) can be readily seen by any person approaching the buffer zone; and
- (b) state that fumigation is being carried out; and
- (c) identify the fumigant being used and state that it is toxic to humans; and
- (d) describe the general type of hazard associated with the fumigant; and
- (e) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

10 Clause 17 amended (Additional and modified requirements applying to EDN)

In clause 17, replace 'The Schedule' with 'Schedule 1'.

11 New clause 18 inserted

After clause 17, insert:

18 Soil condition requirements – AFE-HFP

For the purposes of regulations 11 and 14.26(3) of the Regulations, a PCBU with management or control of fumigation using AFE-HFP must ensure at the beginning of the application that—

- (a) the soil temperature at the depth of injection of AFE-HFP is a minimum of 5°C and does not exceed 27°C; and
- (b) the moisture content of the soil is—
 - (i) equal to or more than 70% when measured with a tensiometer; or
 - (ii) between 50–75% as defined by the USDA Feel and Appearance method.

12 New cross-heading and clauses 19 to 24 inserted

After new clause 18, insert:

Requirements applying to Tri-Form 80

19 Tri-Form 80 required to comply with specified regulations

- (1) Tri-Form 80 is required to comply with:
 - (a) regulation 14.4 of the Regulations, under regulation 14.4(1)(c) of the Regulations;
 - (b) regulation 14.20 of the Regulations, under regulation 14.20(1)(c) of the Regulations;
 - (c) regulation 14.21 of the Regulations, under regulation 14.21(1)(c) of the Regulations;
 - (d) regulation 14.22 of the Regulations, under regulation 14.22(1)(c) of the Regulations;

- (e) regulation 14.23 of the Regulations, under regulation 14.23(1)(c) of the Regulations:
 - (f) regulation 14.24 of the Regulations, under regulation 14.24(1)(c) of the Regulations:
 - (g) regulation 14.26 of the Regulations, under regulation 14.26(1)(b) of the Regulations:
 - (h) regulation 14.27 of the Regulations, under regulation 14.27(1)(b) of the Regulations.
- (2) To avoid doubt, subclause (1) applies in addition to any requirements under the Regulations that apply or relate to Tri-Form 80.

20 Notification of intended fumigation – Tri-Form 80

- (1) This clause applies to a PCBU who intends to carry out fumigation using Tri-Form 80.
- (2) For the purposes of regulations 11 and 14.7(4) of the Regulations, regulation 14.7 applies as if the following subclause were inserted after subclause (3):
- "(3A) A PCBU who intends to carry out fumigation using Tri-Form 80 must, not less than 24 hours before the start of the fumigation, also notify the PCBU's intention to carry out fumigation to each person who—
- (a) may be affected by the fumigation; and
 - (b) is normally present within 100 m from the outer edge of the buffer zone."

21 PCBU must erect signs – Tri-Form 80

- (1) This clause applies to a PCBU with management or control of fumigation using Tri-Form 80.
- (2) For the purposes of regulations 11 and 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:
- "(1) A PCBU with management or control of fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h) must erect signs at every point of entry to the buffer zone that—
- (a) can be readily seen by any person approaching the buffer zone; and
 - (b) state that fumigation is being carried out; and
 - (c) identify the fumigant being used and state that it is toxic to humans; and
 - (d) describe the general type of hazard associated with the fumigant; and
 - (e) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."
- (3) For the purposes of regulations 11 and 14.10(5)(b) of the Regulations, a PCBU with management or control of fumigation using Tri-Form 80 must ensure that signs are removed within 72 hours of the end of the buffer zone period.

22 Size of application block – Tri-Form 80

For the purposes of regulations 11 and 14.20(2)(c) of the Regulations, a PCBU with management or control of fumigation using Tri-Form 80 must ensure that the application block is not more than 32 hectares.

23 PCBU to set buffer zones – Tri-Form 80

- (1) For the purposes of regulations 11 and 14.22(8) of the Regulations, a PCBU with management or control of fumigation using Tri-Form 80 must ensure that the buffer zone extends at least to the relevant distance specified in the table in Schedule 2 unless reduced in accordance with subclauses (2) and (3).
- (2) The distances in the table in Schedule 2 may be reduced up to a maximum reduction of 80% for a particular buffer zone, in accordance with [table 5](#) in Schedule 18 of the Regulations, if highly retentive film is used and the fumigant is applied to specific soil types.
- (3) Despite subclause (2), a buffer zone must in all cases be not less than 8 m.

24 Soil condition requirements – Tri-Form 80

For the purposes of regulations 11 and 14.26(3) of the Regulations, a PCBU with management or control of fumigation using Tri-Form 80 must ensure at the beginning of the application that—

- (a) the soil temperature at the depth of injection of Tri-Form 80 is a minimum of 5°C and does not exceed 27°C; and
- (b) the moisture content of the soil is—
 - (i) equal to or more than 70% when measured with a tensiometer; or
 - (ii) between 50–75% as defined by the USDA Feel and Appearance method.

13 Schedule amended

In the Schedule heading replace ‘Schedule’ with ‘Schedule 1’

14 New Schedule inserted

After Schedule 1, insert the Schedule 2 set out in the Schedule of this safe work instrument.

Schedule

New Schedule 2 inserted

cl 11

Schedule 2

Buffer zone distances for Tri-Form 80

cl 22

The following table states the minimum distance (in metres) between the perimeter of the application block and any point of the perimeter of the buffer zone for all applications. In this table, BEAR means broadcast equivalent application rate (kg Tri-Form 80/ha).

BEAR	Application block size (ha)																	
	1	2	3	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32
< 82	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
82	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	9
90	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	9
100	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	9
130	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	9
142	8	8	8	8	8	8	8	8	8	8	8	8	8	9	9	9	9	9
149	8	8	8	8	8	8	8	8	8	8	8	9	9	9	9	9	9	9
157	8	8	8	8	8	8	8	8	8	8	8	9	9	9	9	9	10	10
164	8	8	8	8	8	8	8	8	8	8	8	9	9	9	10	10	10	11
172	8	8	8	8	8	8	8	8	8	8	8	9	9	9	10	10	11	12
180	8	8	8	8	8	8	8	8	8	8	8	10	11	12	12	14	14	16
187	8	8	8	8	8	8	8	9	9	9	11	13	15	17	18	19	20	21
194	8	8	8	8	8	8	9	11	11	12	15	19	19	20	21	22	23	24
202	8	8	8	8	8	9	10	11	12	13	16	21	21	21	22	23	24	25
210	8	8	8	8	8	10	11	12	14	16	19	22	22	24	25	27	28	29
217	8	8	8	8	8	11	12	13	16	19	21	23	25	27	28	30	32	34
224	8	8	8	8	8	13	13	14	18	21	23	24	27	30	32	34	36	38
232	8	8	8	8	9	13	14	16	19	23	25	27	30	33	35	37	39	41
239	8	8	8	9	12	13	16	17	20	27	29	32	35	37	39	41	44	46
246	8	8	8	10	14	17	20	25	28	31	33	36	39	42	44	46	48	51
254	8	8	8	12	17	21	22	28	29	36	38	41	43	46	48	51	52	53
260	8	8	8	14	20	23	26	31	36	40	43	45	47	51	53	54	55	56
269	8	8	8	16	23	26	28	34	39	42	45	48	50	53	55	56	57	58
276	8	8	9	19	26	29	31	37	43	46	49	52	55	57	60	63	64	64
284	8	8	10	21	29	32	34	41	48	51	53	56	59	61	64	68	69	69
292	8	9	12	23	32	35	37	45	52	55	58	60	63	66	69	73	74	75
300	9	9	12	23	32	36	39	47	53	56	59	61	64	67	71	75	77	78
306	9	9	12	23	32	37	43	49	55	58	60	63	66	69	74	78	80	81
314	9	10	12	23	34	40	43	51	57	59	62	65	68	71	75	80	82	84

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BEAR	Application block size (ha)																	
	1	2	3	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32
321	9	10	12	23	34	44	47	53	59	61	64	67	70	73	78	82	84	87
329	9	10	12	23	34	48	51	55	60	62	66	69	72	75	80	84	86	90
336	10	11	13	23	35	48	51	57	62	64	68	71	74	77	82	87	89	93
344	10	11	13	28	35	51	53	59	64	66	70	73	76	79	85	90	92	96
351	10	11	13	28	35	51	53	61	66	68	72	75	78	81	87	93	95	99
358	11	12	14	28	35	55	57	63	68	70	74	77	80	83	90	96	98	102
366	11	12	14	28	35	55	57	65	70	72	76	79	82	85	92	99	101	105
373	11	12	14	28	35	57	59	67	72	74	78	81	84	87	95	102	104	108
381	12	13	15	28	35	57	59	69	74	76	80	83	86	89	97	105	107	111
388	12	13	15	28	35	57	59	71	76	78	82	85	88	91	100	108	110	114
396	12	13	15	28	35	57	59	73	78	80	84	87	90	93	102	111	113	117
404	12	13	15	28	37	60	62	75	80	82	86	89	92	95	104	114	116	120
411	13	14	16	28	37	60	62	77	82	84	88	91	94	97	106	116	119	124
418	13	14	16	32	39	60	62	79	84	86	90	93	96	99	108	117	122	128
426	13	14	16	32	39	62	64	81	86	88	92	95	98	101	110	119	124	131
433	13	14	16	32	39	62	64	83	88	90	94	97	101	104	112	121	127	134
441	14	15	17	32	39	64	66	85	90	92	96	99	104	107	115	123	130	137
448	14	15	17	32	39	64	66	87	92	94	98	101	107	111	118	125	133	140
456	14	15	17	35	42	65	67	89	94	96	100	103	110	115	121	127	136	143
463	15	16	18	35	42	65	67	91	96	98	104	108	113	117	123	129	139	145
471	15	16	18	35	42	66	68	93	98	102	108	112	116	119	125	131	142	147
478	16	17	18	35	42	68	70	95	100	105	112	116	119	122	127	132	145	148
485	16	18	18	37	44	70	74	97	102	110	116	120	123	126	129	133	148	150
493	17	18	19	37	44	71	76	99	106	115	118	123	124	129	131	135	150	152
500	17	18	19	38	45	73	90	106	112	118	120	126	127	132	134	136	152	154
507	17	18	19	39	46	74	91	107	113	120	126	127	132	134	136	144	154	156
514	18	20	25	43	54	84	107	113	120	126	129	132	134	136	144	154	156	158
521	18	25	35	55	75	91	107	120	125	129	132	134	136	144	154	156	158	160
529	19	25	45	75	107	116	120	125	129	132	134	136	144	154	156	158	160	164
536	20	45	75	107	113	118	125	129	132	134	136	144	154	156	158	160	164	167
543	25	53	85	113	119	123	127	132	134	136	144	154	156	158	160	164	167	171
550	30	60	95	115	120	126	132	134	136	144	154	156	158	160	165	167	171	175

Made at Wellington on 10 August 2022.

Hon Michael Wood
Minister for Workplace Relations and Safety

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This safe work instrument is administered by WorkSafe New Zealand.