



**ROAD TRANSPORT FORUM NEW ZEALAND INC
SUBMISSION ON
Health and Safety at Work
(HAZARDOUS SUBSTANCES)
Regulations 2016**

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SUBMISSION BY ROAD TRANSPORT FORUM NEW ZEALAND TO MBIE ON THE HEALTH AND SAFETY AT WORK (HAZARDOUS SUBSTANCES) REGULATIONS

1.0 Road Transport Forum New Zealand

1.1 Road Transport Forum New Zealand (RTF) is a nationwide organisation representing the road transport industry. The Forum provides services to and public policy advocacy for its affiliated members who comprise owner-drivers, fleet operators and international corporates engaged in freight and logistics.

1.2 The Forum's Constituent Associations include:

- National Road Carriers (Inc)
- Road Transport Associations NZ (Inc)
- NZ Trucking Association

1.3 The Forum's member associations have in excess of 3,000 members and associate members who operate approximately 17,000 trucks over 3,500 kg.

1.4 The Forum is the authoritative voice of New Zealand's road transport industry which employs 22,600 people (3.0% of the workforce), has a gross annual turnover of \$6 billion and carts over 70% of New Zealand's land based freight on a tonnes/kilometre basis.

2.0 Introduction

2.1 The amalgamation of the wide range of regulations and requirements for hazardous substances and their appropriate amendment should improve safety and compliance.

2.2 It is worth discussing some of the drafting principles before getting to our comments. The unilateral substitution of "PCBU" for any description of a natural person or business entity conducting any of a number of myriad tasks throughout the draft regulations confuses who is responsible for what.

- 2.3 There are also examples in the draft regulations where two separate people or entities are related to in the same passage where they appear to morph into one single but different entity. Regulation 16.42(4) states "*The PCBU must ensure that fire extinguishers are installed and located on the road tank wagon in such a way that the PCBU is able to extract...*". While we understand the intent of this passage the person that ensures a vehicle is adequately fitted with fire extinguishers is probably not going to be the same person that uses them.
- 2.4 Draft regulation 16.31(3) "*A person designing a transportable container....*" is an example of how that ambiguity can be reduced by clearly identifying who is responsible for what. To address that it may be better to actually identify who or what that entity/ person is responsible for throughout the regulations unless it is abundantly clear who the "PCBU" may be or what their role is.
- 2.5 The lack of reference to certain class 2, 3, and 4 substances being under control of approved handlers in the draft regulations suggests that requirement has been dropped. The commentary accompanying the regulations seeks feedback on the approved handler qualification and training duties under draft regulation 4.3 and invites conversation on what requirements and threshold levels should be retained.
- 2.6 If the intent is to drop the approved handler qualification for class 2,3 and 4 and introduce an alternative training and auditing regime we welcome that. If that is not the intention we draw MBIE's attention to earlier submissions requesting that qualification be dropped if alternate training and monitoring schemes can be put in place.
- 2.7 Undoubtedly MBIE will receive an amount of response from members of the training and qualification industry, who for too long, have profited extremely well from the existing system who probably will not support a change away from the approved handler qualification.

- 2.8 Their reasoning will be from a purely commercial aspect whereas ours is based on improving safety.
- 2.9 The point being that our sector of the industry welcomes the opportunity to improve its performance. Removing the approved handler requirements will encourage that. The NZ Qualifications Authority and a number of regulatory bodies have recognised the advantages of industry training and third party assessment. A fundamental step change has been made to the training regime for transport industry qualification. On the job training accompanied by third party assessment has been demonstrated to work extremely well and is improving performance within other sectors of the road freight transport industry.
- 2.10 That should provide MBIE with the confidence that industry is well prepared and capable of exceeding their obligations. There is too little space in this submission to discuss how industry will meet the requirements of 4.3 and we welcome the opportunity to discuss and expand on this.

3.0 Comment

- 3.1 Handling, storage and transport procedures and techniques used in the industry have been developed and finely honed over a long period of time. Those processes and protocols have been in accordance with Land transport legislation and industry constantly strives to exceed those requirements.
- 3.2 The redrafting of the regulations provides a valuable opportunity to improve safety at transit depots. That safety is related directly to the segregation of incompatible goods and how they are handled. It makes sense to discuss both topics contemporaneously.
- 3.3 Clauses 10.36, 12.19 and 13.32 could be amended to improve safety. Dangerous goods that are legally compatible on a vehicle may not in some instances be placed in proximity to each other prior to loading.

- 3.4 This is an extremely cumbersome and inefficient way of handling freight. This is especially so at depots where multiple shipments are being consolidated on the same loading platforms.
- 3.5 It is also worth noting that when heavy vehicles are being loaded with hazardous goods that is done quickly and at times incompatible hazardous goods are in close proximity to each other.
- 3.6 We believe that the requirements in 10.36, 12.19, and 13.32 should be brought into line with land transport legislation when being handled and loaded.
- 3.7 Under that system different hazardous goods classes have distinctive separation distances. It would be beneficial to specify in the regulations a minimum separation distance when staging hazardous goods for loading and unloading. We suggest amending the draft regulations to stipulate that incompatibles should be kept separate by 3 metres.
- 3.8 The regulations should also be amended to recognise hazardous goods that are being loaded from those that are being stored for extensive periods of time. If being stored for extended periods of time the requirements in Land transport legislation should be referenced.
- 3.9 The discussion document contains a variety of penalties. We accept that in some cases some form of penalty should accompany under performance. We do think that some of the penalties are out of context and in a number of cases unnecessary.
- 3.10 In a number of cases the draft regulations cut across land transport legislation and the penalties imposed by them. There needs to be a clear distinction between the two. It would be manifestly unfair for a transport operator to be imposed a penalty under Land transport legislation and also through the Hazardous Substances regulations.

- 3.11 Having two similar regimes will be confusing and given the familiarity that transport operators have with Land Transport legislation and the legacy that the Land Transport (Dangerous Goods) rule and accompanying Standard (NZS 5433 Parts I and II) have provided the road freight industry it is simpler and more effective to give that hierarchy.
- 3.12 The penalties in a number of examples seem out of context with other parts of legislation. For example 10.2(a) of the Land Transport (Offences and Penalties) regulations stipulate that the consignor of dangerous goods for transport must ensure that dangerous goods are properly packaged individual. The penalty for failure to do so is \$5,000 for an individual and \$25,000 for a body corporate. 10.3(f) also assigns for a person who loads vehicle or freight container used to transport dangerous goods who must ensure the vehicle is securely loaded a penalty of \$3,500 for an individual and \$15,000 for a body corporate. The penalties proposed by the draft regulations are of significantly higher magnitude.
- 3.13 We consider them excessive purely for the fact that Land Transport legislation is based on long historical case law and judgement and is justified. The penalties in the draft regulations seem poorly considered and no justification for their magnitude has been provided.

Conclusion

The regulations offer a number of opportunities to improve safety when handling, storing and transporting hazardous goods. We do not oppose the majority of the regulation clauses and believe that the suggestions provided here will benefit the mutual goal of improving efficiency without inhibiting safety.

We welcome the opportunity to discuss our submission further.