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ENVIRONMENTAL RISK MANAGEMENT AUTHORITY

HAZARDOUS SUBSTANCES (FUMIGANTS) TRANSFER NOTICE 2004 (AS AMENDED)*

PURSUANT TO THE HAZARDOUS SUBSTANCES
AND NEW ORGANISMS ACT 1996

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This version incorporates the following:

- Hazardous Substance (Fumigants) Transfer Notice 2004, (Supplement to the *New Zealand Gazette*, 29 October 2004, No. 140 page 3471)
- Hazardous Substance (Fumigants) (Amendment) Transfer Notice 2005, (*New Zealand Gazette*, 28 April 2005, No. 73 page 1739)
- Hazardous Substances (Fumigants) (Amendment) Transfer Notice 2006, (*New Zealand Gazette*, 21 June 2006, No 61, page 1469)

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Hazardous Substances and New Organisms Act 1996

Hazardous Substances (Fumigants) Transfer Notice 2004

Pursuant to section 160A of the Hazardous Substances and New Organisms Act 1996 (in this notice referred to as **the Act**), the Environmental Risk Management Authority gives the following notice.

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1 Title

This notice is the Hazardous Substances (Fumigants) Transfer Notice 2004.

2 Commencement

This notice comes into force on 1 November 2004.

3 Interpretation

In this notice, unless the context otherwise requires—

fumigation means the use of a hazardous substance described in Schedule 1 (fumigants) for the purpose of destruction of rodents, pests, or other plant or animal organisms

fumigation area means any of the following where fumigation is or is intended to be carried out:

- (a) all or part of—
 - (i) a ship:
 - (ii) an aircraft:
 - (iii) a building:
 - (iv) a glasshouse:
 - (v) any other enclosed structure:
- (b) a fumigation cell:
- (c) a shipping container:
- (d) a silo:
- (e) a soil area:
- (f) a covered space:
- (g) any other area where a hazardous substance described in Schedule 1 (fumigants) is or is intended to be released.

fumigation cell means a sealed chamber, which may include a shipping container, used exclusively for fumigation

fumigation under sheets means fumigation carried out under gas-proof sheets of plastic, tarpaulins, or other materials, but does not include space fumigation in which such sheets are used to isolate the fumigation area

person in charge, in relation to a place where fumigation is or is intended to be carried out, means a person who is—

- (a) the owner, lessee, sublessee, occupier, or person in possession of the place, or any part of it; or
- (b) any other person who, at the relevant time, is in effective control or possession of the relevant part of the place

place includes a fumigation area

risk area means the fumigation area and any area (including a ship, aircraft, building, space or structure) to which, in the opinion of an approved handler, a hazardous substance described in Schedule 1 may penetrate if released

shipping container—

- (a) includes a standardised device—
 - (i) of a permanent character strong enough to be suitable for repeated use; and
 - (ii) used to contain or hold goods—

(A) while being loaded or unloaded for carriage by rail, road, or sea; or

(B) carried by rail, road, or sea; but

(b) does not include—

(i) a shipping container that is a fumigation cell; or

(ii) a vehicle, ordinary packing case, crate, box, or similar item used for packing

silos means a building or other structure used principally for the bulk storage of—

(a) cereal; or

(b) products of cereal; or

(c) animal feedstuffs; or

(d) other loose material

space fumigation means fumigation carried out in a building or other enclosed structure, and—

(a) includes fumigation under gas-proof sheets of plastic, tarpaulins, or other materials to isolate the fumigation area in a building or other enclosed structure:

(b) does not include—

(i) fumigation of a ship or aircraft; or

(ii) fumigation in a fumigation cell or shipping container; or

(iii) fumigation under sheets

variation code, in relation to a hazardous substance, means a number set out in the column entitled “variation code(s)” opposite its description in Schedule 1 (fumigants).

4 Deemed assessment and approval

- (1) On the commencement of this notice, the substances described in Schedule 1 (fumigants), are no longer subject to the provisions of Parts XI to XVI of the Act.
- (2) Each hazardous substance described in Schedule 1 (fumigants) is deemed to have been assessed and approved by the Authority under section 29 of the Act.

5 Deemed hazard classification

Each hazardous substance described in Schedule 1 (fumigants) is deemed to have the hazard classifications specified opposite its description in Schedule 1.

6 Application of controls and changes to controls

- (1) The controls that apply to the hazardous substances described in Schedule 1 (fumigants) are as follows:
 - (a) the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001, with the changes indicated in Schedule 2:
 - (b) the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001, with the changes indicated in Schedule 2:
 - (c) the Hazardous Substances (Packaging) Regulations 2001:
 - (d) the Hazardous Substances (Disposal) Regulations 2001:
 - (e) the Hazardous Substances (Tracking) Regulations 2001:
 - (f) the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001:
 - (g) the Hazardous Substances (Emergency Management) Regulations 2001:
 - (h) the Hazardous Substances (Identification) Regulations 2001, with the changes indicated in Schedule 2:
 - (i) the Hazardous Substances (Compressed Gases) Regulations 2004:
 - (j) the Hazardous Substances (Tank Wagon and Transportable Containers) Regulations 2004:
 - (k) the controls for stationary container systems set out in Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (*Gazette*, 2004, No 35, p 767), as amended by the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) (Amendment) Transfer Notice 2004 (*Gazette*, 2004, No 128, p 3133), with the changes indicated in Schedule 2:
 - (l) the controls for the adverse effects of unintended ignition of class 2 and class 3.1 hazardous substances set out in Schedule 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (*Gazette*, 2004, No 35, p 767), (as so amended), with the changes indicated in Schedule 2.
- (2) Subclause (1)(k) applies despite clause 1(1) of Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (*Gazette*, 2004, No 35, p 767).
- (3) Subclause (1)(l) applies despite clause 1 of Schedule 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (*Gazette*, 2004, No 35, p 767).

7 Other obligations and restrictions

The obligations and restrictions specified in Schedule 3 (new controls for fumigants) and Schedule 4 (transitional controls) are imposed as controls under section 160B of the Act applying to the hazardous substances described in Schedule 1 (fumigants).

8 Tolerable exposure limits

Under regulation 24(1) of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001, the Authority sets as tolerable exposure limits for each hazardous substance listed in column 1 of the table in Schedule 5 the values specified in relation to the substance in column 2 of that table.

9 Workplace exposure standards

- (1) Under regulation 29(2) of the Hazardous Substance (Classes 6, 8, and 9 Controls) Regulations 2001, the Authority adopts as a workplace exposure standard in relation to each hazardous substance described in Schedule 1 (fumigants), and each component of each hazardous substance described in that Schedule, the value or values specified in the document described in subclause (2) relating to that hazardous substance, or component, if any.
- (2) The document referred to in subclause (1) is the document entitled “Workplace Exposure Standards”, published by the Occupational Safety and Health Service, Department of Labour, January 2002, ISBN 0-477-03660-0.

Schedule 1

List of substances (fumigants) to be transferred

Substance	Hazard Classifications	Variation Code(s)
Liquid containing 1153 g/litre 1,3-dichloropropene	3.1B, 6.1C, 6.3A, 6.4A, 6.5B, 6.6B, 6.7B, 6.9B, 9.1A, 9.2D, 9.3B	2, 3
Liquid containing 615 g/kg 1,3-dichloropropene and 345 g/kg chloropicrin	3.1B, 6.1A, 6.3A, 6.4A, 6.5A, 6.5B, 6.6B, 6.7B, 6.9A, 9.1A, 9.2A, 9.3B	2, 3
Liquid containing 990 g/kg chloropicrin	6.1A, 6.3A, 6.5A, 6.9A, 8.3A, 9.1A, 9.2A, 9.3B	2
Discoid containing hydrocyanic acid	6.1A, 6.3A, 6.4A, 6.5A, 6.5B, 6.8B, 6.9A, 9.1A, 9.2A, 9.3A, 9.4A	4
Gas containing 1000 g/kg methyl bromide	2.1.1B, 6.1B, 6.3A, 6.4A, 6.6B, 6.8B, 6.9A, 9.1A, 9.2A, 9.3B, 9.4A	2, 3, 4
Gas containing 980 g/kg methyl bromide and 20 g/kg chloropicrin	2.1.1B, 6.1B, 6.3A, 6.4A, 6.5A, 6.6B, 6.8B, 6.9A, 9.1A, 9.2A, 9.3B, 9.4A	2, 3, 4
[Gas containing 300 – 670 g/kg methyl bromide and 330 – 700 g/kg chloropicrin]	2.1.1B, 6.1A, 6.3A, 6.5A, 6.6B, 6.8B, 6.9A, 8.3A, 9.1A, 9.2A, 9.3B, 9.4A	2, 3
Gas containing 20 g/kg phosphine	[6.1C, [6.9B], 9.1C, 9.3C, 9.4C]	4
Pellets containing 570 g/kg aluminium phosphide	4.3A, 6.1A, 6.3B, 6.4A, 6.9A, 9.1A, 9.3A	1, 4
Pellets containing 660 g/kg magnesium phosphide	4.3A, 6.1A, 6.3B, 6.4A, 6.9A, 9.1A, 9.3A	1, 4

Schedule 2

Changes to controls relating to fumigants

**Control – Hazardous
Substances (Classes 1 to 5
Controls) Regulations
2001**

Changes to Controls

Regulations 55 and 77

These regulations apply to each hazardous substance described in Schedule 1 with variation code 1 as if the item in table 4 of Schedule 3 of the regulations relating to class 4.3A hazardous substances were omitted and replaced with the following:

4.3A 3 kg

Regulation 56

This regulation applies to each hazardous substance described in Schedule 1 with variation code 1 as if the item in table 4 of Schedule 3 of the regulations relating to class 4.3A hazardous substances were omitted and replaced with the following:

4.3A 3 kg

[New regulation 56A

The regulations apply to each hazardous substance described in Schedule 1 as if the following regulation were inserted immediately after regulation 56:

**56A Exception to approved handler requirement for
transportation of packaged substances**

- (1) Regulation 56 is deemed complied with if—
- (a) in the case of a hazardous substance being transported on land—
- (i) in the case of a hazardous substance being transported by rail, the person who drives the rail vehicle that is transporting the substance is fully trained in accordance with an approved safety system under section 6D of the Transport Services Licensing Act 1989 or a safety system which is referred to in an approved safety case under the Railways Act 2005; and
- (ii) in every other case, the person who drives, loads, and unloads the vehicle that is transporting the substance—

- (A) for hire or reward, or in quantities which exceed those set out in Schedule 1 of the Land Transport Rule 45001/1: Dangerous Goods 2005, has a current dangerous goods endorsement on his or her drivers licence; or
 - (B) in every other case, the Land Transport Rule 45001/1: Dangerous Goods 2005 is complied with; or
 - (b) in the case of a hazardous substance being transported by sea, one of the following is complied with:
 - (i) Maritime Rules: Part 24A – Carriage of Cargoes – Dangerous Goods (MR024A):
 - (ii) International Maritime Dangerous Goods Code; or
 - (c) in the case of a hazardous substance being transported by air, Part 92 of the Civil Aviation Rules is complied with.
- (2) Subclause (1)(a) —
- (a) does not apply to a tank wagon or transportable container to which the Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 applies; but
 - (b) despite paragraph (a), does apply to an intermediate bulk container that complies with chapter 6.5 of the UN Model Regulations.
- (3) Subclause (1)(c) —
- (a) applies to pilots, aircrew, and airline ground personnel loading and handling a hazardous substance within an aerodrome; but
 - (b) does not apply to the storage and handling of a hazardous substance in any place that is not within an aerodrome, or within an aerodrome by non-airline ground personnel.
- (4) In this regulation, **UN Model Regulations** means the 14th revised edition of the Recommendation on the Transport of Dangerous Goods Model Regulations, published in 2005 by the United Nations.]

**Control – Hazardous
Substances (Classes 6, 8,
and 9 Controls)
Regulations 2001**

Changes to Controls

Regulation 9

This regulation applies to each hazardous substance in Schedule 1 with variation code 1 as if subclause (1) were omitted and the following substituted:

- (1) Each class 6, 8, and 9 substance must be,—
 - (a) if there is more than 3 kg of the substance, under the personal control of an approved handler; or
 - (b) if the substance is not in use, secured by a lock so that a person cannot gain access to the substance unless the person has a key or other device used for operating the lock.

[New regulation 9A

This regulations apply to each substance described in Schedule 1 as if the following regulation were inserted immediately after regulation 9:

9A Exception to approved handler requirement for the transportation of packaged substances

- (1) Regulation 9 is deemed to be complied with if—
 - (a) in the case of a hazardous substance being transported on land—
 - (i) in the case of a hazardous substance being transported by rail, the person who drives the rail vehicle that is transporting the substance is fully trained in accordance with an approved safety system under section 6D of the Transport Services Licensing Act 1989 or a safety system which is referred to in an approved safety case under the Railways Act 2005; and
 - (ii) in every other case, the person who drives, loads, and unloads the vehicle that is transporting the substance—
 - (A) for hire or reward, or in quantities which exceed those set out in Schedule 1 of the Land Transport Rule 45001/1: Dangerous Goods 2005, has a current dangerous goods endorsement on his or her drivers licence; or

- (B) in every other case, the Land Transport Rule 45001/1: Dangerous Goods 2005 is complied with; or
- (b) in the case of a hazardous substance being transported by sea, one of the following is complied with:
 - (i) Maritime Rules: Part 24A – Carriage of Cargoes – Dangerous Goods (MR024A):
 - (ii) International Maritime Dangerous Goods Code; or
- (c) in the case of a hazardous substance being transported by air, Part 92 of the Civil Aviation Rules is complied with.
- (2) Subclause (1)(a)—
 - (a) does not apply to a tank wagon or transportable container to which the Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004 applies; but
 - (b) despite paragraph (a), does apply to an intermediate bulk container that complies with chapter 6.5 of the UN Model Regulations.
- (3) Subclause (1)(c)—
 - (a) applies to pilots, aircrew, and airline ground personnel loading and handling a hazardous substance within an aerodrome; but
 - (b) does not apply to the storage and handling of a hazardous substance in any place that is not within an aerodrome, or within an aerodrome by non-airline ground personnel.
- (4) In this regulation, **UN Model Regulations** means the 14th revised edition of the Recommendation on the Transport of Dangerous Goods Model Regulations, published in 2005 by the United Nations.]

Regulations 28 and 32

The regulations apply to each hazardous substance described in Schedule 1 as if these regulations were omitted.

Regulation 50

The regulation applies to each hazardous substance described in Schedule 1 with variation code 1 as if this regulation were omitted.

**Control – Hazardous
Substances**

(Identification)

Regulations 2001

Changes to Controls

Regulations 11, 22, and 43

These regulations apply to discoid containing hydrocyanic acid as if it is a class 2.1.1A hazardous substance.

Regulations 37 and 38

These regulations apply to discoid containing hydrocyanic acid as if it has a class 2.1.1A hazard classification in addition to every other hazard classification specified in relation to that substance in Schedule 1.

**Control – Hazardous
Substances (Tracking)**

Regulations 2001

Changes to Controls

[Regulation 6

The regulations apply to each hazardous substance described in Schedule 1 with variation code 1 as if subclause (a) of this regulation were omitted at the point of retail sale when, at that point:

- (a) the aggregate quantity of each substance being sold is 3 kg or less; and
- (b) the sale is to a person who will use that substance for fumigation.

Schedule 2, clause 5

This clause applies to each hazardous substance described in Schedule 1 with variation code 1 as if subclause (b) were omitted at the point of retail sale when, at that point:

- (a) the aggregate quantity of each substance being sold is 3 kg or less; and
- (b) the sale is to a person who will use that substance for fumigation,

and the following subclause substituted:

- “(b) the address of the place, the identity of the person who will be in control of the substance at that place, and the position (if any) of that person within his or her organisation; and”.

Regulations 4 to 6

The regulations apply to each hazardous substance described in Schedule 1 with variation code 1 after the point of retail sale if the aggregate quantity of each substance is 3 kg or less as if these regulations were omitted.]

**Control – Schedule 8 of
the Hazardous Substances
(Dangerous Goods and
Scheduled Toxic
Substances) Transfer
Notice 2004 (*Gazette*,
2004, No 35, p 767)**

Changes to Controls

Clause 1

This clause applies to each hazardous substance described in Schedule 1 with variation code 2 as if the words “Schedules 1 and 2” in subclause (1) were omitted and the following substituted:

Schedule 1 of the Hazardous Substances (Fumigants) Transfer Notice 2004

Clause 100

This clause applies to each hazardous substance described in Schedule 1 with variation code 2 as if subclause (1) were omitted and the following substituted:

- (1) In this Part, **existing stationary container system** means a stationary container system to which this Schedule applies that, immediately before 1 July 2004,—
 - (a) was being used to contain a substance described in Schedule 1 of the Hazardous Substances (Fumigants) Transfer Notice 2004; or
 - (b) was designed to be used to contain a substance described in that Schedule, and construction of the stationary container system to that design had commenced.

**Control – Schedule 10 of
the Hazardous Substances
(Dangerous Goods and
Scheduled Toxic
Substances) Transfer
Notice 2004 (*Gazette*,
2004, No 35, p 767)**

Changes to Controls

Clause 1

This clause applies to each hazardous substance described in Schedule 1 with variation code 3 as if the words “Schedule 1 provided that for the purposes of this Schedule, low flashpoint diesel (low flash domestic heating oil and alpine diesel) shall be deemed to have a flammable classification of 3.1D” were omitted and the following substituted:

Schedule 1 of the Hazardous Substances (Fumigants) Transfer Notice 2004.

Clause 33

This clause applies to each hazardous substance described in Schedule 1 with variation code 3 as if the words “Subject to subclause (2)” in subclause (1) were omitted.

Clause 33

This clause applies to each hazardous substance described in Schedule 1 with variation code 3 as if subclause (2) were omitted.

Schedule 3

New controls for fumigants

Contents

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Licences

1 Licences required for fumigants

- (1) No person may possess a hazardous substance described in Schedule 1 unless that person has a licence under section 95B of the Act from the Authority that is obtained before the person takes possession of the substance.
- (2) Despite subclause (1), a person who does not have a licence may possess a hazardous substance described in Schedule 1 if—
 - (a) in the case of the following hazardous substances, the aggregate quantity of each substance possessed by that person is 3 kg or less:
 - (i) pellets containing 660 g/kg magnesium phosphide:
 - (ii) pellets containing 570 g/kg aluminium phosphide; or
 - (b) in any other case, a person who has such a licence is present and available immediately to the person in possession of the substance; or
 - (c) the person is deemed to comply with regulation 9 of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 by regulation 9A of those regulations (as inserted by Schedule 2 of this notice).

Prohibitions and restrictions on fumigation in shipping containers

2 Shipping container under fumigation must not be moved

- (1) This clause applies to fumigation in a shipping container using a hazardous substance described in Schedule 1 with variation code 4.

- (2) No person may move or transport by road or rail a shipping container to which this clause applies unless an approved handler has determined that fumigation is complete in accordance with clause 10.
- (3) Despite subclause (2), a person may move a shipping container to which this clause applies from a wharf to a ship that is berthed at the wharf, or from the ship to the wharf.

3 Restriction on fumigation in shipping containers

- (1) This clause applies to fumigation in a shipping container using a hazardous substance described in Schedule 1 with variation code 4.
- (2) Fumigation to which this clause applies—
 - (a) may only be carried out in a place that is secured against ready access by unauthorised persons; and
 - (b) must not be carried out in an area where the public may lawfully be present.

4 Shipping containers must be gas tight for certain substances

No person may release a hazardous substance described in Schedule 1 with variation code 4 in a shipping container unless, at the time the substance is released,—

- (a) the container is in good repair and capable of being securely closed; and
- (b) the container—
 - (i) retains the substance without leakage; or
 - (ii) if the container does leak, it is able to be modified immediately so that it does not leak, for example by covering and sealing with one or more gas-proof sheets.

Restriction on fumigation in fumigation cells

5 Fumigation cells must be gas tight for certain substances

No person may release a hazardous substance described in Schedule 1 with variation code 4 in a fumigation cell unless the cell retains the substance without leakage at all of the temperatures and pressures at which the cell is used.

Process for fumigation

6 Notification of intended fumigation

- (1) A person who intends to carry out fumigation, other than fumigation of a type described in column 1 of the table in subclause (2), must notify each person who may be affected by the fumigation of the person's intention to carry out fumigation.
- (2) A person who intends to carry out fumigation of a type described in column 1 of the following table must notify the following of the person's intention to carry out fumigation:
 - (a) each person specified in column 2 of that table in relation to that type of fumigation:

(b) every other person who may be affected by the fumigation.

Column 1	Column 2
Space fumigation Fumigation in a glasshouse Fumigation of soil or compost in a glasshouse, building, or other enclosed structure	<ul style="list-style-type: none"> • The nearest Communications Centre of the New Zealand Fire Service; and • Person in charge of the place
Fumigation of commodities on a ship Fumigation of a ship or aircraft	<ul style="list-style-type: none"> • The nearest Communications Centre of the New Zealand Fire Service; and • Port or Airport Authority (if on port/airport land); and • Person in charge of the place
Fumigation of silos Fumigation of grain or other loose material in small bins, or in bulk on the floor of a building or other structure	<ul style="list-style-type: none"> • Person in charge of the place
Fumigation in a fumigation cell Fumigation in a shipping container	<ul style="list-style-type: none"> • Port or Airport Authority (if on port/airport land); and • Person in charge of the place
Fumigation under sheets	<ul style="list-style-type: none"> • The nearest Communications Centre of the New Zealand Fire Service (if fumigation is in an area where the public may lawfully be present); and • Port or Airport Authority (if on port/airport land); and • Person in charge of the place
Fumigation of mammals underground	<ul style="list-style-type: none"> • The nearest Communications Centre of the New Zealand Fire Service if: <ul style="list-style-type: none"> (a) the fumigation is undertaken on, or adjacent to, land that is close to or adjoins a private dwelling, school, playing field or reserve, or any amenity area, or area where the public may lawfully be present; or (b) the risk area may encroach on any such land or area; and • Person in charge of the place

Soil fumigation outdoors	<ul style="list-style-type: none"> • The nearest Communications Centre of the New Zealand Fire Service if: <ul style="list-style-type: none"> (a) the fumigation is undertaken on, or adjacent to, land that is close to or adjoins a private dwelling, school, playing field or reserve or other amenity area, or area where the public may lawfully be present; or (b) the risk area may encroach on any such land or area; and • Person in charge of the place
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- (3) A notification required under subclause (1) or subclause (2) must be given not less than 24 hours prior to the commencement of fumigation.
- (4) However, a notification may be given less than 24 hours prior to the commencement of fumigation if the fumigation is urgent for a reason or reasons relating to biosecurity or public health.
- (5) A notification to the person in charge of the place required under subclause (2) may also be given less than 24 hours prior to the commencement of fumigation that will be carried out in a fumigation cell or shipping container, or fumigation under sheets, if the fumigation is to be carried out at an established location where such fumigations are routinely carried out.
- (6) The requirement under subclause (2) to notify the nearest Communications Centre of the New Zealand Fire Service of fumigation carried out in a fumigation cell or shipping container, or fumigation under sheets, is met if—
- (a) the fumigations are carried out at an established location on a routine basis as part of regular work activities; and
 - (b) the location is secured against ready access by unauthorised persons; and
 - (c) the person carrying out the fumigations notifies the nearest Communications Centre of the New Zealand Fire Service of the intention to carry out fumigations at the location prior to the commencement of the first of the fumigations.

7 Signage

- (1) This clause applies to the following types of fumigation:
- (a) space fumigation:
 - (b) fumigation of—
 - (i) a glasshouse; or
 - (ii) a ship; or
 - (iii) commodities on a ship; or
 - (iv) an aircraft; or
 - (v) a silo; or

- (vi) grain or other loose material in small bins, or in bulk on the floor of a building or other structure:
 - (c) fumigation in a fumigation cell:
 - (d) fumigation in a shipping container:
 - (e) fumigation under sheets:
 - (f) fumigation of soil or compost in a glasshouse, building, or other enclosed structure:
 - (g) fumigation of mammals underground undertaken on land where members of the public may lawfully be present:
 - (h) soil fumigation outdoors if—
 - (i) the fumigation is undertaken on, or adjacent to, land that is close to or adjoins a private dwelling, school, playing field or reserve, or other amenity area, or area where the public may lawfully be present; or
 - (ii) the risk area may encroach on any such land or area.
- (2) A person who carries out a fumigation to which this clause applies must erect signs in accordance with the following:
- (a) in the case of fumigation of a type described in any of paragraphs (a) to (f) of subclause (1), signs must be erected at every point of access to the place where fumigation will be carried out that—
 - (i) state that fumigation is being carried out; and
 - (ii) identify the hazardous substance being used and state that it is toxic to humans; and
 - (iii) describe the general type of hazard associated with the substance; and
 - (iv) if the substance is flammable, describe the precautions necessary to prevent unintended ignition of the substance:
 - (b) in the case of fumigation of a type described in any of subclause (1)(a), or (b)(ii), or (b)(iii), or (b)(iv), or (e), or (g), or (h), signs must be erected at the perimeter of the risk area that—
 - (i) are able to be readily seen by a person approaching the risk area; and
 - (ii) state that fumigation is being carried out; and
 - (iii) identify the substance being used and state that it is toxic to humans; and
 - (iv) describe the general type of hazard associated with the substance; and
 - (v) if the substance is flammable, describe the precautions necessary to prevent unintended ignition of the substance.

- (3) Signs erected in accordance with subclause (2)(a) in respect of fumigation carried out in a room or compartment within a building or other enclosed space must be positioned at each entrance to the room or compartment.
- (4) Each sign erected in accordance with subclause (2) must—
 - (a) comply with regulation 34(1), (2), and (4), and regulation 35(1), (3), and (5) of the Hazardous Substances (Identification) Regulations 2001, but as if the distances referred to in regulation 35(3) were a distance of not less than 10 metres; and
 - (b) identify the person in charge of the fumigation and provide sufficient information to enable the person to be contacted during normal business hours; and
 - (c) state the day on which the fumigation commenced; and
 - (d) state the actions that must be taken in an emergency; and
 - (e) other than for soil fumigations outdoors or fumigation of mammals underground, be illuminated during the hours of darkness.
- (5) Signs must be removed immediately on the completion of fumigation in accordance with clause 10(1).

8 Supervision of fumigation

- (1) This clause applies to the following types of fumigation using a hazardous substance described in Schedule 1 with variation code 4:
 - (a) space fumigation:
 - (b) fumigation of—
 - (i) a ship; or
 - (ii) commodities on a ship; or
 - (iii) an aircraft.
- (2) A person who carries out a fumigation to which this clause applies must ensure that, for the period commencing immediately prior to the application or release of the substance and ending at the completion of the fumigation in accordance with clause 10(1),—
 - (a) the fumigation is adequately supervised; and
 - (b) every point of access to the risk area is controlled against unauthorised entry.

9 Final safety precautions

- (1) This clause applies to the following types of fumigation:
 - (a) space fumigation:
 - (b) fumigation of—

- (i) a glasshouse; or
 - (ii) a ship; or
 - (iii) commodities on a ship; or
 - (iv) an aircraft; or
 - (v) a silo; or
 - (vi) grain or other loose material in small bins, or in bulk on the floor of a building or other structure:
- (c) fumigation in a fumigation cell:
 - (d) fumigation in a shipping container:
 - (e) fumigation under sheets:
 - (f) fumigation of soil or compost in a glasshouse, building, or other enclosed structure.
- (2) Every person who carries out a fumigation to which this clause applies must—
- (a) take all reasonable steps to ensure that the fumigation area is properly ventilated so that, at the completion of fumigation,—
 - (i) in the opinion of an approved handler, the substance used to carry out the fumigation has dispersed from all parts of the fumigation area (including all confined spaces in the fumigation area); and
 - (ii) the maximum concentration of the hazardous substance used in the fumigation that is in the risk area is reduced to the lower of—
 - (A) the workplace exposure standard set in accordance with clause 9 of this notice in relation to the substance, or any component of it, if any; or
 - (B) the lowest level practicable; and
 - (b) prior to allowing any person access to the risk area, ensure that the approved handler referred to in paragraph (a)(i) is satisfied that the risk area is safe for such persons to enter.

10 Completion of fumigation and notice of completion

- (1) Fumigation is complete when—
- (a) the fumigation area has been ventilated in accordance with clause 9 (if that clause applies); and
 - (b) the approved handler referred to in clause 9(2)(a)(i) has stated that he or she is satisfied that the risk area for the fumigation is safe for persons to enter.
- (2) When fumigation is complete, the person carrying out the fumigation must give notice that fumigation is complete to each person to whom notice was given in accordance with clause 6.

Schedule 4

Transitional controls

Contents

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9	Fire extinguishers and emergency management response plans
10	Tolerable exposure limits

1 Purpose of Schedule

- (1) The purpose of this Schedule is to provide for a transitional period to allow persons dealing with hazardous substances to which this notice applies to comply with the Act, and controls under the Act, in relation to those hazardous substances.
- (2) This Schedule achieves the purpose described in subclause (1) by—
 - (a) providing that, for a period of 6 months from the commencement of this notice, a person may comply with the obligations and restrictions that applied to those substances immediately before the commencement of this notice, as if this notice (other than this Schedule) had not been given; and
 - (b) providing for obligations and restrictions that apply after the expiry of that 6 month period to progressively impose the requirements of the Act, and controls under the Act, in relation to those substances.

2 Persons may comply with Act and controls at any time

Except as specifically provided in this Schedule, this Schedule does not prevent a person from complying with the Act, and controls under the Act, as if this Schedule did not exist.

3 Schedule does not apply to substance in stationary container system

Nothing in this Schedule applies to a stationary container system to which Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (*Gazette*, 2004, No 35 p 767) applies by virtue of clause 6(1)(k) of this notice.

4 Compliance with obligations and restrictions as at 31 October 2004 for transitional period

- (1) A person complies with the Act in relation to a hazardous substance to which this notice applies, if the person complies with all obligations and restrictions that were in force in relation to the hazardous substance as at the close of 31 October 2004.
- (2) This clause is subject to any other provision of this Schedule.
- (3) This clause expires with the close of 30 April 2005.

5 Transitional provisions for certificates of competence

- (1) This clause applies to every certificate of competence issued under regulation 5 of the Fumigation Regulations 1967 that is in force immediately before the close of 30 April 2005.
- (2) Every certificate to which this clause applies continues in force for the purposes of this Schedule.
- (3) On and from 1 May 2005 every certificate to which this clause applies is deemed to be a licence granted under section 95B of the Act as required by clause 1 of Schedule 3.
- (4) A licence deemed to be granted under subclause (3) authorises the holder to possess hazardous substances to which the licence relates.
- (5) A licence deemed to be granted under subclause (3) expires—
 - (a) if an application for a licence under section 95B of the Act (as required by clause 1 of Schedule 3) is made before the close of 31 October 2006, on the date that the application is granted or declined; or
 - (b) if such an application is not made by that date, at the close of 31 October 2006.

6 Transitional provision for fumigation by or on behalf of commercial grower

- (1) Clause 1 of Schedule 3 does not apply to fumigation carried out by or on behalf of a commercial grower on land—
 - (a) owned or occupied by the commercial grower; and
 - (b) used exclusively for agricultural or horticultural purposes.
- (2) In subclause (1) **commercial grower** means the occupier of land who derives a substantial proportion of his or her income from the use by him or her of the land for any agricultural or horticultural purpose.
- (3) This clause expires with the close of 31 October 2006.

6A Transitional provision for importers, manufacturers and suppliers

- (1) Clause 1 of Schedule 3 does not apply to any person in possession of a hazardous substance described in Schedule 1 in his or her capacity as an importer, manufacturer, or supplier of such hazardous substance if on or before 31 October 2004 they were engaged in the activities of importing, manufacturing or supplying that substance.
- (2) This clause expires with the close of 31 October 2006.

7 Packaging

- (1) Packaging of a hazardous substance to which this notice applies is not required to comply with the Hazardous Substances (Packaging) Regulations 2001 if it complies with the requirements for packaging that applied to the hazardous substance at the close of 31 October 2004.
- (2) This clause expires with the close of 31 October 2006.

8 Identification, documentation, and signage

- (1) A person is not required to comply with the regulations specified in subclause (2) in relation to a hazardous substance to which this notice applies if the person complies with the requirement for identification, documentation, and signage in relation to that substance that applied to the hazardous substance at the close of 31 October 2004.
- (2) The regulations are—
 - (a) the Hazardous Substances (Identification) Regulations 2001; and
 - (b) regulations 11 to 14 of the Hazardous Substances (Disposal) Regulations 2001; and
 - (c) regulations 6 to 20 and 42 of the Hazardous Substances (Emergency Management) Regulations 2001.
- (3) This clause expires with the close of 31 October 2006.

9 Fire extinguishers and emergency management response plans

- (1) A person in charge of a place where a hazardous substance to which this notice applies is present is not required to comply with regulations 21 to 34 of the Hazardous Substances (Emergency Management) Regulations 2001 if that person complies with the requirements for fire extinguishers and emergency management response plans that applied in relation to the substance at the close of 31 October 2004.
- (2) This clause expires with the close of 31 October 2005.

10 Tolerable exposure limits

- (1) A person who uses a hazardous substance to which this notice applies is not required to comply with regulation 27 of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 until 1 July 2006.
- (2) This clause expires with the close of 30 June 2006.

Schedule 5

Tolerable exposure limits

The following table specifies tolerable exposure limits set for the substances specified in column 1. These limits are for each substance specified in column 2 when it is a component of the substance or substances specified opposite it in column 1.

Column 1	Column 2
Substance	Component and tolerable exposure limit
Liquid containing 990 g/kg chloropicrin	<u>Chloropicrin</u>
Liquid containing 615 g/kg 1,3-dichloropropene and 345 g/kg chloropicrin	TEL _{air} = 0.0004 mg/m ³
Liquid containing 1153 g/litre 1,3-dichloropropene	<u>1,3-Dichloropropene</u> TEL _{air} = 0.02 mg/m ³
Discoid containing hydrocyanic acid	<u>Hydrogen cyanide</u> TEL _{air} = 0.009 mg/m ³
Gas containing 1000 g/kg methyl bromide	<u>Methyl bromide</u>
Gas containing 980 g/kg methyl bromide and 20 g/kg chloropicrin	TEL _{air} = 0.005 mg/m ³
[Gas containing 300 – 670 g/kg methyl bromide and 330 – 700 g/kg chloropicrin]	<u>Chloropicrin</u> TEL _{air} = 0.0004 mg/m ³
Gas containing 20 g/kg phosphine	<u>Phosphine</u>
Pellets containing 570 g/kg aluminium phosphide	[TEL _{air} = 0.0003 mg/m ³]
Pellets containing 660 g/kg magnesium phosphide	

These tolerable exposure limits come into force from 1 July 2006 (refer Schedule 4, clause 10).