

1996—No. 180

**OCCUPATIONAL HEALTH AND SAFETY ACT 1983—
REGULATION**

(Occupational Health and Safety (Hazardous Substances) Regulation 1996)

NEW SOUTH WALES



[Published in Gazette No. 61 of 17 May 1996]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Occupational Health and Safety Act 1983, has been pleased to make the Regulation set forth hereunder.

JEFFREY SHAW, Q.C., M.L.C.,
Minister for Industrial Relations.

PART I—PRELIMINARY

Citation

1. This Regulation may be cited as the Occupational Health and Safety (Hazardous Substances) Regulation 1996.

Commencement

2. This Regulation commences on 12 July 1996.

Object

3. The object of this Regulation is to minimise risks to health due to exposure to hazardous substances in places of work:

- (a) by ensuring that hazardous substances used at work are provided with labels and material safety data sheets; and
- (b) by ensuring that employees who could be exposed to hazardous substances used at work are provided with information and training on the nature of the hazards they pose and on the means of assessing and controlling exposure to such substances, and that employee representatives in places of work have access to this information; and

- (c) by providing for the assessment of the risk of, and the control of, exposure to hazardous substances; and
- (d) by ensuring that emergency services have access to relevant information on hazardous substances in places of work.

Application

4. (1) This Regulation applies to all hazardous substances, to all places of work in which hazardous substances are used or produced, and to all persons who have been, are or may become exposed to hazardous substances in those places of work.

(2) This Regulation applies to and in respect of self-employed persons in the same way as it applies to and in respect of employers and, for that purpose, any reference in this Regulation to an employer includes a reference to a self-employed person.

(3) This Regulation does not apply to any place of work to which the Mines Inspection Act 1901 or the Coal Mines Regulation Act 1984 applies.

Exclusion of certain Substances

5. (1) This Regulation does not apply to the following substances if their use is not related to a work activity:

- (a) food;
- (b) therapeutic agents;
- (c) cosmetics;
- (d) tobacco and tobacco products;
- (e) toiletries and toilet products.

(2) This Regulation does not apply to:

- (a) any radioactive substance to which the Radiation Control Act 1990 applies; or
- (b) any infectious substance (that is, any viable micro-organism, such as a bacterium, virus, rickettsia, parasite, fungus, recombinant, hybrid or mutant, that is known or reasonably believed to cause disease in humans or animals).

(3) This Regulation does not apply to a hazardous substance while it is being transported in accordance with any of the following publications:

- (a) the document entitled “Australian Code for the Transport of Dangerous Goods by Road and Rail” prepared by the Federal Office of Road Safety;

- (b) the document entitled “International Maritime Dangerous Goods Code” published by the International Maritime Organization, copies of which are available for inspection at the offices of WorkCover;
- (c) the document entitled “Technical Instructions for the Safe Transport of Dangerous Goods by Air” published by the International Civil Aviation Organization, copies of which are available for inspection at the offices of WorkCover;
- (d) the document entitled “Dangerous Goods Regulations” published by the International Air Transport Association, copies of which are available for inspection at the offices of WorkCover.

Definitions

6. (1) In this Regulation, a word or expression that is defined in the Dictionary to this Regulation has the meaning given to it by the Dictionary.

(2) A reference in this Regulation to a document prepared or published by any body or authority is to be taken as a reference to that document, as in force from time to time, and (if the document is revoked and remade, with or without modifications) includes a reference to the new document, as in force from time to time.

(3) Notes to this Regulation do not form part of this Regulation.

Note: Sections 4 and 18 of the Occupational Health and Safety Act 1983 set out various definitions that are relevant to the interpretation and operation of this Regulation.

PART 2—SUPPLIER’S DUTIES

Classification of hazardous substances

7. (1) Before first supplying a substance for use at work, the manufacturer or importer of the substance must determine whether the substance is a hazardous substance:

- (a) by ascertaining whether it is listed in the document entitled “List of Designated Hazardous Substances”, published by Worksafe Australia; or
- (b) by ascertaining whether it fits the criteria for hazardous substances set out in the document entitled “Approved Criteria for Classifying Hazardous Substances”, published by Worksafe Australia.

(2) If:

- (a) a manufacturer or importer determines that a substance is a hazardous substance on the basis of the document entitled “Approved Criteria for Classifying Hazardous Substances”; and
- (b) the substance is a natural or artificial entity (and not any composite material, mixture or formulation); and
- (c) the substance is not listed in the document entitled “List of Designated Hazardous Substances”,

the manufacturer or importer must, by notice in writing, inform Worksafe Australia of the determination.

Preparation of material safety data sheets

8. (1) Before first supplying a hazardous substance for use at work, the manufacturer or importer of the substance must prepare a material safety data sheet (an “MSDS”) for the substance.

(2) The MSDS:

- (a) must clearly identify each hazardous substance to which it relates; and
 - (b) must set out the following information in relation to each such substance:
 - (i) its recommended uses;
 - (ii) its chemical and physical properties;
 - (iii) information relating to each of its ingredients, to the extent required by clause 11;
 - (iv) any relevant health-hazard information;
 - (v) information concerning the precautions to be followed in relation to its safe use and handling; and
 - (c) must set out the name, and Australian address and telephone numbers (including an emergency number), of the manufacturer or importer.
- (3) The manufacturer or importer:**
- (a) must review and revise the MSDS as often as is reasonably necessary to keep it up-to-date and, in any event, at intervals not exceeding 5 years; and
 - (b) must provide a copy of any MSDS (or revised MSDS) to the Australian National Material Safety Data Sheet Repository maintained by Worksafe Australia.

Material safety data sheets to be provided before hazardous substance is supplied

9. (1) A supplier of a hazardous substance for use at work must ensure, in relation to each hazardous substance supplied, that a current MSDS is provided:

- (a) on the first occasion the substance is supplied to a particular person, to the person to whom it is supplied; and
- (b) at any other time, to any person who claims to be associated with the use of the substance at work and who asks to be provided with a copy of the MSDS.

(2) Subclause (1) (a) does not apply to a hazardous substance that is supplied to a retailer or a retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

Labels

10. (1) A supplier of a hazardous substance for use at work must ensure that any container of the substance is appropriately labelled.

(2) Without limiting subclause (1), the supplier must ensure that any such label:

- (a) clearly identifies the hazardous substance; and
- (b) sets out the name, and Australian address and telephone numbers (including an emergency number), of the supplier; and
- (c) discloses information relating to each ingredient to the extent required by clause 11; and
- (d) provides basic health and safety information about the substance, including any relevant risk phrases and safety phrases.

(3) If the container to be labelled is so small that it is not practicable to include all the particulars referred to in subclause (2), it is sufficient if the label complies with paragraphs (a) and (b) of that subclause.

Ingredient disclosure

11. (1) An MSDS must disclose the following information about the ingredients of the hazardous substance to which it relates:

- (a) for each type I ingredient, its chemical name;
- (b) for each type II ingredient:
 - (i) its chemical name; or

(ii) if the identity of the ingredient is commercially confidential, its generic name;

(c) for each type III ingredient:

(i) its chemical name; or

(ii) its generic name.

(2) If a generic name is used to identify a type II ingredient under subclause (1) (b) (ii), the manufacturer, importer or supplier must notify Worksafe Australia of the use of the generic name in a manner and form determined by Worksafe Australia.

(3) If the manufacturer, importer or supplier considers that compliance with subclause (1) (c) would not provide sufficient commercial protection for a type III ingredient, other than an ingredient that has a known synergistic effect or is a hazardous substance, the MSDS may indicate that the ingredient has been determined not to be hazardous by the use of the phrase “OTHER INGREDIENTS DETERMINED NOT TO BE HAZARDOUS”.

(4) This clause applies to the label on a container of a hazardous substance in the same way as it applies to the MSDS for the substance, but only in relation to type I and type II ingredients.

Disclosure of ingredients on request by medical practitioner

12. (1) If an MSDS or label does not disclose the chemical name of an ingredient of a hazardous substance, the manufacturer or importer of the substance must disclose the chemical identity of the ingredient to any medical practitioner or ambulance officer who applies to the manufacturer or importer for the disclosure of that information for the purpose of emergency medical treatment.

(2) The manufacturer or importer must immediately respond to the application but, on or after supplying any information, may require the medical practitioner or ambulance officer concerned to sign a written undertaking that he or she will only use the information for the purpose for which it has been provided.

Disclosure of ingredients on request by other persons

13. (1) An application may be made to the manufacturer or importer of a hazardous substance for the disclosure of the chemical identity of any ingredient of the substance that is not disclosed by the MSDS or label for the substance.

(2) The manufacturer or importer may require the application to be made in writing and to set out details of the grounds on which it is made.

(3) The manufacturer or importer must respond to the application within 30 days after it is received.

(4) The manufacturer or importer may make it a condition of the provision of any information on the application that the applicant sign a written undertaking that he or she will only use the information for the purpose for which it has been provided.

(5) In the case of an application made by WorkCover, by an employer or employee or by a representative of an employer or employee, the manufacturer or importer must disclose the chemical identity of the ingredient to the applicant if the application is made for the express purpose of protecting the health of persons who may be exposed to the hazardous substance through its use at work.

(6) In any other case, the manufacturer or importer may either disclose the chemical identity of the ingredient or else reject the application.

(7) If the manufacturer or importer rejects the application, the manufacturer or importer:

- (a) must provide the applicant with written reasons for the rejection; and
- (b) must provide such information as is necessary to satisfy the grounds on which the application is made without disclosing the chemical identity of the ingredient.

Provision of other relevant information

14. A supplier who supplies a hazardous substance for use at work must provide to an employer, on request:

- (a) any summary report (within the meaning of the Industrial Chemicals (Notification and Assessment) Act 1989 of the Commonwealth) that relates to the substance; and
- (b) any other relevant information (in addition to the information contained in an MSDS) that will assist in the safe use of the substance.

PART 3—EMPLOYER'S DUTIES

Division 1—Duties relating to the availability of information

Material safety data sheets

15. (1) For each hazardous substance supplied to an employer's place of work, the employer:

- (a) must obtain an MSDS for the substance before or on the first occasion on which it is supplied; and

- (b) must ensure that the MSDS is readily accessible to any employee who could be exposed to the substance; and
- (c) must ensure that the MSDS is not altered, otherwise than where it is appropriate that an overseas MSDS be reformatted by the employer.

(2) The provisions of subclause (1) (a) and (b) do not apply to a hazardous substance that is supplied to a retailer or retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

Labels

16. (1) An employer must ensure that a container that holds a hazardous substance used at work, including one supplied to or produced within the employer's place of work, is appropriately labelled and that the label is not removed, defaced or altered.

(2) Without limiting subclause (1), an employer must ensure that the label:

- (a) clearly identifies the hazardous substance; and
- (b) provides basic health and safety information about the substance, including any relevant risk phrases and safety phrases.

(3) However:

- (a) a container into which a hazardous substance is decanted for use within the next 12 hours need only be labelled with the product name and the relevant risk phrases and safety phrases; and
- (b) a container into which a hazardous substance is decanted for immediate use need not be labelled, so long as it is cleaned immediately after it has been emptied of the substance.

Registers

17. (1) An employer must ensure that a register is kept and maintained for all hazardous substances used at the employer's place of work.

(2) The employer must ensure that the register includes:

- (a) a list of all hazardous substances used at the employer's place of work; and
- (b) the relevant MSDS (if any) for each of those hazardous substances.

(3) The employer must ensure that the register is readily accessible to all employees who may be exposed to a hazardous substance while at the employer's place of work.

(4) This clause does not apply to a hazardous substance that is supplied to a retailer or retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

Provision of other relevant information

18. An employer must ensure that the identity of any hazardous substance contained in an enclosed system (such as a pipe or piping system, or a process or reactor vessel) is notified to any person who could be exposed to the substance.

Division 2—Duties relating to risk assessment and risk control

Consultation

19. An employer must consult with employees who are likely to be exposed to risks arising from hazardous substances used at work, and with employee representatives, about:

- (a) the requirements of this Division concerning hazard identification, risk assessment, risk control, risk monitoring, training and provision of information; and
- (b) any proposed changes to systems of work associated with hazardous substances that may affect health and safety.

Risk assessment

20. (1) An employer:

- (a) must identify all hazardous substances that are used or produced at the employer's place of work; and
- (b) must ensure that a suitable and sufficient assessment is made of the risks to health created by work that involves possible exposure to any of those hazardous substances.

(2) The assessment must include, for each hazardous substance to which the work involves possible exposure:

- (a) a review of the following information:
 - (i) if the substance is held in an unopened consumer package, any label on the package;
 - (ii) the relevant MSDS (if any) for the substance;
 - (iii) any other information about the substance that is available to the employer; and
- (b) the identification of any risk to health created by the work.

(3) The assessment to be carried out by a retailer or retail warehouse operator need not include a review of the matters referred to in subclause (2) (a) (ii) and (iii) in respect of any hazardous substance that is contained in an unopened consumer package holding less than 30 kilograms or 30 litres of the substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

(4) An assessment may relate to more than one work activity, more than one place of work and more than one hazardous substance, so long as it takes account of the particular circumstances of each work activity, each place of work and each hazardous substance to which it relates.

(5) If, after complying with subclause (2), an employer concludes that no risk to health is created by the work, the employer must ensure that a notation is made in the register maintained under Division 1 to indicate that each stage of the assessment process has been duly completed.

(6) If an assessment identifies a risk to health created by the work, the employer must ensure:

- (a) that the steps necessary to comply with clauses 21, 22, 23, 24 and 25 are identified; and
- (b) that a report is prepared on the assessment.

(7) The assessment must be revised:

- (a) whenever there is evidence to indicate that the assessment is no longer valid; and
- (b) whenever the employer is advised on any necessary preventive or remedial action as a result of health surveillance undertaken under Division 3; and
- (c) whenever there is a significant change in the work to which the assessment relates,

and, in any event, must be reviewed at intervals not exceeding 5 years.

(8) The employer must ensure that any report prepared under this clause is readily accessible to any employee or other person working at the employer's place of work who could be exposed to a hazardous substance to which the report relates.

Control

21. (1) In the event that an assessment under this Division identifies a risk to health created by work that involves possible exposure to a hazardous substance of any employee or other person working at the employer's place of work, the employer must ensure that exposure to the substance is prevented or, if that is not practicable, adequately controlled so as to minimise the risks to health caused by the substance.

(2) In so far as is practicable, the prevention or adequate control of a person's exposure to a hazardous substance must be achieved by measures other than the provision of personal protective equipment.

(3) If measures undertaken in accordance with subclause (2) do not prevent or provide adequate control of a person's exposure to a hazardous substance, the employer must provide to the person, in addition to taking those measures, suitable personal protective equipment that will adequately control the person's exposure to the hazardous substance.

(4) The employer must ensure that all engineering controls, safe work practices and personal protective equipment are properly maintained and used.

Airborne concentrations of hazardous substances

22. (1) An employer must ensure that no employee or other person working at the employer's place of work is exposed to an airborne concentration of a hazardous substance in his or her breathing zone at a level greater than that established by the appropriate exposure standard.

(2) For the purposes of this clause, the appropriate exposure standard is to be determined in accordance with the document entitled "Exposure Standards for Atmospheric Contaminants in the Occupational Environment" published by Worksafe Australia, except that the exposure standard for chrysotile is taken to be 0.5 fibres per millilitre of air rather than the standard derived from that document.

Monitoring

23. If an assessment under this Division indicates that atmospheric monitoring should be undertaken at an employer's place of work, the employer:

- (a) must undertake appropriate monitoring in accordance with a suitable procedure; and
- (b) must ensure that the results of the monitoring are recorded; and
- (c) must ensure that any employee or other person working at the employer's place of work who may be or may have been exposed to a hazardous substance that has been monitored is provided with the results of the monitoring; and
- (d) must ensure that the monitoring records are readily accessible to any such employee or person.

Induction and on-going training

24. (1) An employer must provide induction and on-going training to any employee who is likely to be exposed to any hazardous substance at the employer's place of work.

(2) The induction and on-going training must be commensurate with any risk to health caused by a hazardous substance that has been identified by an assessment under this Division.

(3) The induction and on-going training must be provided in a manner that is appropriate to the employees at the employer's place of work.

(4) The employer must keep a record of any induction and on-going training provided under this clause.

Division 3—Duties relating to health surveillance

Health surveillance

25. (1) An employer must provide health surveillance for each employee who, as identified by an assessment under Division 2, could be exposed to a hazardous substance:

- (a) if there is a risk to the health of the employee from a substance referred to in Schedule 1; or
- (b) if any exposure of the employee to a hazardous substance is such that:
 - (i) an identifiable disease or other effect on health may be related to the exposure; and
 - (ii) there is a reasonable likelihood that the disease or other effect on health may occur under the particular conditions of work; and
 - (iii) there is available an effective technique for detecting indications of the disease or other effect on health; or
- (c) if there is a reasonable likelihood that levels of a hazardous substance that could be a risk to health could be exceeded and there is available an effective procedure for the biological monitoring of those levels.

(2) The employer must ensure that:

- (a) the health surveillance is performed under the supervision of a medical practitioner approved by WorkCover; and
- (b) if there is a significant risk to the health of an employee from a hazardous substance referred to in Schedule 1, the health surveillance includes the carrying out of the procedures specified in that Schedule in relation to that substance.

(3) The selection of the medical practitioner who is to supervise the surveillance must be undertaken by the employer after consultation with the relevant employees.

(4) The health surveillance must be undertaken at the expense of the employer.

Notification of results of health surveillance

26. (1) As soon as practicable after an employee undergoes health surveillance in accordance with this Division, the medical practitioner must ensure that:

- (a) the employee is notified of the results of the surveillance, and given any necessary explanation of those results; and
- (b) the employer is notified of the general outcome of the surveillance, and advised on any necessary preventive or remedial action; and
- (c) WorkCover is notified of any adverse result detected in the health surveillance that is consistent with exposure to a hazardous substance referred to in Schedule 1.

(2) The employer must ensure that any results of health surveillance obtained by the employer are kept confidential.

Storage and use of medical records

27. (1) A medical practitioner must ensure that medical records obtained as a result of health surveillance for an employee are retained as confidential records and, if the medical practitioner has examined or treated the employee for any other purpose, that the records are clearly identified as being for the purpose of health surveillance under this Regulation.

(2) The medical practitioner must ensure that the informed consent of the employee is obtained, in writing, before any medical records that have been obtained as a result of health surveillance, and that identify the employee, are provided to any person who is not bound to observe principles of professional confidentiality.

(3) If the medical practitioner ceases to practise in New South Wales, the medical practitioner must offer the records to Workcover.

Division 4—General

Prohibition of scheduled substances for specified uses

28. An employer must ensure that a hazardous substance referred to in Column 1 of Schedule 2 is not used for a purpose referred to in Column 2 of that Schedule in respect of that substance.

Record keeping

29. (1) An employer must retain, as a record, in a suitable form:

- (a) all assessment reports indicating a need for monitoring or health surveillance, and the results of any monitoring or health surveillance, for at least 30 years from the date of the last entry in them; and
- (b) all assessment reports not indicating a need for monitoring or health surveillance, for at least 5 years from the date of the last entry in them; and
- (c) all records of induction and on-going training under this Regulation, for at least 5 years from the date of their creation.

(2) If the employer ceases to carry on business in New South Wales, the employer must offer the records referred to in subclause (1) (a) to WorkCover.

WorkCover and emergency services

30. An employer must ensure that all relevant records on hazardous substances that are required by this Regulation are kept at the employer's place of work and are made available on request to WorkCover and to all emergency services.

PART 4—MISCELLANEOUS**Employee's duties**

31. An employee must promptly report to his or her supervisor or employer any matter that, to the knowledge of the employee, will affect the employer's ability to comply with this Regulation.

Maximum penalty: 10 penalty units.

Breaches of regulation constitute offences under Part 3 of the Act

32. (1) The object of this clause is to adapt the provisions of Part 3 of the Act to meet circumstances that give rise to a breach of this Regulation.

(2) For the purposes of Part 3 of the Act:

- (a) an employer who contravenes or fails to comply with a provision of this Regulation is taken to have failed to comply with section 15 (1) or 16 (1) or (2) of the Act, as the case requires; and

(b) a supplier who contravenes or fails to comply with a provision of this Regulation is taken to have failed to comply with section 18 (2) (a), (b) or (c) (ii) of the Act, as the case requires.

(3) Part 3 of the Act is adapted to give effect to this clause.

(4) This clause is made under the power conferred by section 46 of the Act.

Note: Part 3 of the Act:

- (a) requires employers to ensure the health, safety and welfare at work of employees; and
- (b) requires suppliers to ensure that substances supplied for use at work are safe and without risks to health; and
- (c) requires employers and suppliers to ensure the safety and absence of risks to health in connection with the use, handling, storage or transport of substances and, in connection with the use of a substance, to provide adequate information to ensure the substance will be safe and without risks to health when properly used.

Exemptions

33. (1) A person may apply to WorkCover for an exemption from the whole or any part of this Regulation.

(2) Before making such an application, the person must cause notice of the proposed application to be given to all persons employed at any place of work concerned or, if an occupational health and safety committee is established for any such place of work, to the convener of the committee.

(3) The notice:

- (a) must state that the person proposes to seek an exemption from this Regulation; and
- (b) must state the effect of such an exemption; and
- (c) must state that submissions may be made to the person concerning the proposal to apply for such an exemption; and
- (d) must specify the person to whom, and the date by which, any such submissions should be made.

(4) An application must be in writing and must include copies of the written submissions, and a summary of the oral submissions, made in connection with the application.

(5) On receipt of the application, WorkCover:

- (a) may, by order in writing, exempt the person from the whole or any part of this Regulation; or
- (b) may dismiss the application.

(6) An exemption may be given unconditionally or subject to such conditions as WorkCover considers appropriate.

(7) If WorkCover dismisses the application, it must give written notice to the applicant of the fact that it has dismissed the application, together with its reasons for dismissing the application.

Transitional arrangements

34. (1) An employer must comply with the provisions of this Regulation from the commencement of this Regulation as far as it is practicable to do so and, in any event, must comply fully with those provisions from the second anniversary of the commencement of this Regulation.

(2) A supplier who was supplying a particular hazardous substance for use at work immediately before the commencement of this Regulation must comply with clauses 8, 9, 10, 11, 12, 13 and 14, to the extent to which those clauses apply to that substance, from the second anniversary of the commencement of this Regulation.

(3) A supplier who begins supplying a particular hazardous substance for use at work at any time within the first year after the commencement of this Regulation must comply with clauses 8, 9, 10, 11, 12, 13 and 14, to the extent to which those clauses apply to that substance, from the first anniversary of the commencement of this Regulation.

(4) However, if a supplier or employer has an MSDS, label or other similar information or material relating to a substance, the supplier or employer must provide or use that information or material in accordance with this Regulation from the commencement of this Regulation.

Repeal

35. The Occupational Health and Safety (Asbestos Dust) Regulation 1984 is repealed.

**SCHEDULE 1—HAZARDOUS SUBSTANCES FOR WHICH HEALTH
SURVEILLANCE IS REQUIRED**

(Cl. 25)

Column 1	Column 2
HAZARDOUS SUBSTANCE	TYPE OF HEALTH SURVEILLANCE
Acrylonitrile	Occupational and medical history Demographic data Records of personal exposure
Arsenic (Inorganic).	Demographic, medical and occupational history Exposure record Physical examination with emphasis on the peripheral nervous system and skin Urinary total arsenic
Asbestos	Occupational and demographic data Medical interview Records of personal exposure
Cadmium	Demographic, medical and occupational history Exposure record Physical examination with emphasis on the respiratory system Standard respiratory questionnaire to be completed Standard respiratory function tests including for example, FEV1, FVC and FEV1/FVC Urinary cadmium and B2-microglobulin
Crystalline Silica	Completion of a standardised respiratory questionnaire Standardised respiratory function test, such as FEV1, FVC and FEV1/FVC Chest X-ray, full size PA view
Isocyanates	Occupational and medical history Completion of a standardised respiratory questionnaire Physical examination of the respiratory system and skin Standardised respiratory function test, such as FEV1, FVC and FEV1/FVC

Mercury (inorganic)	Demographic, medical and occupational history Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems Urinary inorganic mercury
MOCA (4,4-Methylenebis (2-chloroaniline))	Urinary total MOCA Dipstick analysis of urine for haematuria Urine cytology
Organophosphate pesticides	Occupational and medical history Physical examination Baseline estimation of red cell and plasma cholinesterase activity levels by the Ellman or equivalent method Estimation of red cell and plasma cholinesterase activity towards the end of the working day
Polycyclic aromatic hydrocarbons	Exposure record, including photochemical skin burns Demographic, medical and occupational history Physical examination
Thallium	Demographic, medical and occupational history Physical examination Urinary thallium
Vinyl Chloride	Occupational and demographic data Record of personal exposure

**SCHEDULE 2—HAZARDOUS SUBSTANCES PROHIBITED FOR
SPECIFIED USES**

(Cl. 28)

Column 1	Column 2
HAZARDOUS SUBSTANCE	PROHIBITED USE
Arsenic or its compounds	Spray painting
Asbestos in the form of crocidolite, amosite, fibrous anthophyllite, tremolite or actinolite	All uses, except for the purpose of sampling or analysis, maintenance, removal, disposal, encapsulation or enclosure
Benzene (benzol), if the substance contains more than 1% by volume	Spray painting
Carbon disulphide (carbon bisulphide)	Spray painting
Methanol (methyl alcohol), if the substance contains more than 1% by volume	Spray painting
Silicon dioxide (free silica) or any substance containing silicon dioxide	An abrasive in abrasive blasting A constituent of steel casting moulds, when sufficient quantities of suitable alternative non-siliceous materials are available A constituent in parting powders and facing powders used in foundry work A constituent in paints used on the surface of moulds or cores
Tetrachloroethane	Spray painting
Tetrachloromethane (carbon tetrachloride)	Spray painting

Note: The following codes of practice also relate to the control of place of work hazardous substances:

- (a) The Approved Code of Practice for the Control of Workplace Hazardous Substances published by WorkCover;
- (b) The Approved Code of Practice for the Preparation of Material Safety Data Sheets published by WorkCover;
- (c) The Approved Code of Practice for the Labelling of Workplace Substances published by WorkCover.

DICTIONARY

(Cl. 6)

article means something:

- (a) that is formed during production to a specific shape or design, or to have a specific surface; and
- (b) that has an end use that depends in whole or in part on its shape, design or surface; and
- (c) that undergoes no change in chemical composition or physical state during its end use, except as an intrinsic aspect of that end use,

but does not include any fluid or particle, regardless of any shape or design that it may have.

biological monitoring means the measurement and evaluation of hazardous substances or their metabolites in the body tissues, fluids or exhaled air of a person.

bulk container means:

- (a) a container that has a capacity of more than 500 litres (in the case of a container designed to hold gas) or 250 litres (in the case of a container designed to hold liquid or paste); or
- (b) a container that is designed to hold more than 400 kilograms of a solid in an undivided quantity.

chemical name of a substance means a recognised chemical name of the substance that is generally used in scientific or technical texts.

consumer package means a container that is intended for retail display and sale, and includes a container that is transported and distributed as part of a larger consolidated container that consists of a number of identical consumer packages.

container means anything in or by which substances are or have been wholly or partly encased, covered, enclosed, contained or packed (whether empty, partially full or completely full), but does not include a bulk container.

emergency service includes any of the following:

- (a) the Ambulance Service of New South Wales;
- (b) New South Wales Fire Brigades;
- (c) a bush fire brigade;
- (d) the Police Service;
- (e) the Roads and Traffic Authority;

- (f) the State Emergency Service;
- (g) the Environment Protection Authority;
- (h) the Department of Bush Fire Services.

employee representative means an employee member of an occupational health and safety committee, a person elected by the persons employed at a place of work to represent a group of employees on health and safety matters or, (if the employees so agree) an appropriate representative of an industrial organisation of employees.

food has the same meaning as it has in the Food Act 1989.

generic name of a substance means a name that describes the category or group of chemicals to which the substance belongs (for example, azo dyes or halogenated aromatic amines).

hazardous substance means:

- (a) a substance that is listed in the document entitled “List of Designated Hazardous Substances” published by Worksafe Australia; or
- (b) a substance that fits the criteria for a hazardous substance set out in the document entitled “Approved Criteria for Classifying Hazardous Substances” published by Worksafe Australia.

health surveillance means the monitoring of persons to identify changes (if any) in their health due to exposure to a hazardous substance, and includes biological monitoring, but does not include the monitoring of atmospheric contaminants.

importer of a substance means a manufacturer, supplier or retailer who has imported the substance into New South Wales, whether from some other State or Territory or from outside Australia.

ingredient means any component of a substance, and includes any impurity that is mixed in with the substance.

monitor means to survey regularly all measures used to control hazardous substances in a place of work, and includes the monitoring of atmospheric contaminants, but does not include biological monitoring as an element of health surveillance.

MSDS means a material safety data sheet referred to in clause 8.

product name of a hazardous substance means the brand name, trade name, code name or code number specified by the supplier of the substance.

record includes any form in which information is stored on a permanent basis or from which information may be reproduced.

retail warehouse operator means a person who operates a warehouse where unopened packaged goods intended for retail sale are held, but does not include a retailer.

retailer means a person who sells goods to members of the public who are not themselves engaged in any further resale of those goods.

risk phrase, in relation to a substance, means a phrase that describes the hazards of the substance, as referred to in the document entitled “National Code of Practice for the Labelling of Workplace Substances” published by Worksafe Australia.

risk to health, in relation to a substance, means the likelihood that the substance will cause harm to health in the circumstances of its use.

safety phrase, in relation to a substance, means a phrase that describes the procedures for the safe handling or storage of the substance, or the use of personal protective equipment in conjunction with the substance, as referred to in the document entitled “National Code of Practice for the Labelling of Workplace Substances” published by Worksafe Australia.

substance means any natural or artificial entity, composite material, mixture or formulation, other than an article.

supplier means a manufacturer, importer, wholesaler or distributor, but does not include a retailer.

the Act means the Occupational Health and Safety Act 1983.

type I ingredient means an ingredient:

- (a) that is:
 - (i) a carcinogenic, mutagenic or teratogenic substance; or
 - (ii) a skin or respiratory sensitiser; or
 - (iii) a corrosive, toxic, very toxic or harmful substance that can cause irreversible effects after acute exposure; or
 - (iv) a harmful substance that can cause serious damage to health after repeated or prolonged exposure,

according to the document entitled “Approved Criteria for Classifying Hazardous Substances” published by Worksafe Australia; and

- (b) that is present in the particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level in that document,

and includes any other substance that is specifically listed in the document entitled “Exposure Standards for Atmospheric Contaminants in the Occupational Environment” published by Worksafe Australia.

type II ingredient means an ingredient:

- (a) that is a harmful substance according to the document entitled “Approved Criteria for Classifying Hazardous Substances” published by Worksafe Australia; and
- (b) that is present in the particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level in that document; and
- (c) that is not a type I ingredient.

type III ingredient means an ingredient that is not a type I ingredient or a type II ingredient.

use, in relation to a substance, means the production, handling, storage, transport or disposal of the substance.

WorkCover means the WorkCover Authority.

Worksafe Australia means the National Occupational Health and Safety Commission of the Commonwealth.

NOTES

TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Citation
2. Commencement
3. Object
4. Application
5. Exclusion of certain substances
6. Definitions

PART 2—SUPPLIER’S DUTIES

7. Classification of hazardous substances
8. Preparation of material safety data sheets
9. Material safety data sheets to be provided before hazardous substance is supplied
10. Labels
11. Ingredient disclosure

1996—No. 180

12. Disclosure of ingredients on request by medical practitioner
13. Disclosure of ingredients on request by other persons
14. Provision of other relevant information

PART 3—EMPLOYER'S DUTIES

Division 1—Duties relating to the availability of information

15. Material safety data sheets
16. Labels
17. Registers
18. Provision of other relevant information

Division 2—Duties relating to risk assessment and risk control

19. Consultation
20. Risk assessment
21. Control
22. Airborne concentrations of hazardous substances
23. Monitoring
24. Induction and on-going training

Division 3—Duties relating to health surveillance

25. Health surveillance
26. Notification of results of health surveillance
27. Storage and use of medical records

Division 4—General

28. Prohibition of scheduled substances for specified uses
29. Record keeping
30. WorkCover and emergency services

PART 4—MISCELLANEOUS

31. Employee's duties
32. Breaches of regulation constitute offences under Part 3 of the Act
33. Exemptions
34. Transitional arrangements
35. Repeal

SCHEDULE 1—HAZARDOUS SUBSTANCES FOR WHICH HEALTH SURVEILLANCE IS REQUIRED

SCHEDULE 2—HAZARDOUS SUBSTANCES PROHIBITED FOR SPECIFIED USES

DICTIONARY

EXPLANATORY NOTE

The object of this Regulation is to control the supply of hazardous substances to, and the use of hazardous substances at, places of work. The Regulation deals with the following matters:

- (a) suppliers' duties in relation to hazardous substances (Part 2), including:
 - (i) the identification of hazardous substances (clause 7); and
 - (ii) the preparation and provision of material safety data sheets (clauses 8 and 9); and
 - (iii) the labelling of hazardous substance containers (clause 10); and
 - (iv) the disclosure of ingredients contained in hazardous substances and other relevant information (clauses 11–14);
- (b) employers' duties in relation to hazardous substances (Part 3), including:
 - (i) the provision of information concerning hazardous substances (Division 1: clauses 15–18); and
 - (ii) risk assessment and risk control (Division 2: clauses 19–24); and
 - (iii) health surveillance (Division 3: clauses 25–27); and
 - (iv) the prohibition of the use of certain substances for certain purposes (clause 28); and
 - (v) the keeping of records (clause 29); and
 - (vi) the provision of records to WorkCover and emergency services (clause 30);
- (c) other matters of a miscellaneous nature (Parts 1 and 4), including:
 - (i) excluding certain premises and substances from the operation of the Regulation (clauses 4 and 5); and
 - (ii) requiring employees to notify certain matters to employers (clause 31); and
 - (iii) making a breach of the Regulation punishable as a breach of Part 3 of the Occupational Health and Safety Act 1983 (clause 32); and
 - (iv) enabling WorkCover to grant exemptions from the Regulation (clause 33); and
 - (v) transitional arrangements during the first two years of operation of the Regulation (clause 34).

The Regulation also repeals the Occupational Health and Safety (Asbestos Dust) Regulation 1984 (clause 35).

This Regulation is made under the Occupational Health and Safety Act 1983, including section 45 (the general regulation making power) and section 46.

This Regulation relates to matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory and to matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.
