

Hazardous chemical agents: new regulations gazetted

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New regulations on hazardous chemicals have been published. They replace the previous regulations of 1995, and contain new definitions and additional measures on issues, such as labelling and disposal.

The Minister of Employment and Labour recently gazetted new regulations on hazardous chemical agents (2021 Regulations). The 2021 Regulations replace the previous regulations on hazardous chemical substances, which were first published in 1995 (1995 Regulations). The language used in the 2021 Regulations (e.g. “must”) is different to that used in the 1995 Regulations (e.g. “shall”). We highlight the relevant changes below. Where we do not deal with a particular regulation, this means that there is no substantive difference between the 2021 and the 1995 Regulations.

At the outset, **Regulation 18** provides that certain regulations as contained in the 2021 Regulations will only come into effect 18 months after promulgation (i.e. on 29 September 2022). These are Regulations 13(d), 14, 14A, 14B, 14C, 14D; Annexure 1, Tables 1–5; and Annexure 2, Tables 1–4.

New definitions – Regulation 1

The 2021 Regulations incorporate various new and revised definitions, including:

- “BEI” or “biological exposure index” (revised definition)
- “CAS number” or “chemical identity” (new definition)
- “chemical agent” (new definition)
- “GHS [globally harmonised system] hazard classification” (new definition)
- “hazard category” (new definition)
- “hazardous chemical agent” or “HCA” (revised definition)

Scope of application – Regulation 2

The 2021 Regulations, like the 1995 Regulations, apply to employers (including self-employed persons) who carry out work at a workplace that might expose any person to an HCA.

The 2021 Regulations also apply to manufacturers, importers, suppliers, and retailers of an HCA that is intended for use at a workplace. This is new and it is important for stakeholders in these categories to take note of these regulations.

Information, instruction and training – Regulation 3

The 1995 Regulations referred to “information and training” while the 2021 Regulations refer to “information, instruction and training”. The scope of this regulation has also widened, and affected employers must ensure that information, instruction and training include aspects such as:

- Chemical substance regulations are in place that govern all aspects of HCA use at the workplace
- Duties of persons who are likely to be exposed to an HCA
- Details of the HCAs to which the employee is likely to be exposed at the workplace
- Work practices and procedures that must be followed for the use, handling, storage, transportation, spillage and disposal of an HCA,

in emergency situations, as well as for good housekeeping and personal hygiene

- Precautions that must be taken by employees to protect themselves against health risks associated with exposure, including wearing and using protective clothing and respiratory protective equipment

Air monitoring – Regulation 6

The 2021 Regulations remove the requirement to verify the measurement programme of the airborne concentrations of the HCA to which an employee is exposed. If the measurement programme was not carried out by an approved inspection authority (AIA), there is no longer a requirement to use the service of an AIA to carry out that verification.

Medical surveillance – Regulation 7

The provision on medical surveillance in the 2021 Regulations remains the same as that in the 1995 Regulations, except that HCAs are now listed in Table 4 of Annexure 2 of the 2021 Regulations. Examples of HCAs include acetone, benzene, fluorides, lead, mercury and uranium.

Records – Regulation 9

The 2021 Regulations remove the requirement for employers to keep medical surveillance records.

Handling hazardous chemical substances: This regulation from the 1995 Regulations has been completely removed from the 2021 Regulations.

Control of exposure to hazardous chemical agents – Regulation 10

In terms of the 2021 Regulations, the employer must ensure that the emission of an HCA into the atmosphere complies with the provision of the National Environmental Management Air Quality Act (Act No. 39 of 2004).

Prohibitions – Regulation 13

The prohibitions contained in the 1995 Regulations also appear in the 2021 Regulations, with the following additional prohibitions.

No person may:

- Use statements such as “non-toxic”, “non-harmful”, “non-polluting” or “non-hazardous” or similar statements indicating the HCA is not hazardous, or any other statements that are inconsistent with the HCA’s GHS classification on the label or packaging of any HCA
- Manufacture, procure, use, handle or store within the workplace:
 - A prohibited HCA as listed in Table 1 of Annexure 2
 - Ozone-depleting substances provided in the Regulations regarding the Phasing-Out and Management of Ozone-Depleting Substances, published as Government Notice No. R. 351 of 8 May 2014
 - Persistent organic pollutants prohibited by the Prohibition on the Import, Export, Possession, Acquisition, Sale, Use and Disposal of

Agricultural Remedies, under section 7 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), published as Government Notice No. R. 862 of 29 July 2016

Labelling, packaging, transportation and storage: This regulation in the 1995 Regulations was completely removed in the 2021 Regulations.

Classification of hazardous chemical agents – Regulation 14

This is a new regulation in the 2021 Regulations. This regulation requires manufacturers and importers of chemical agents to do the following:

- Determine whether the chemical agent is an HCA by carrying out a hazard assessment, with reference to the cut-off values provided in Tables 4 and 5 of Annexure 1
- If the substance, mixture or article is an HCA, ensure that a GHS classification is carried out for the HCA
- Review the GHS classification if a change is made in the composition of the HCA

This must be done *before* the chemical agents are supplied to a workplace.

Safety data sheet – Regulation 14A

This is a new regulation in the 2021 Regulations, which requires manufacturers and importers to prepare a safety data sheet before manufacture or immediately after manufacture, but before import. The safety data sheet must meet certain requirements and it must be provided by manufacturers and importers to any suppliers of the HCA to a workplace and to any person who is likely to be affected by an HCA. It must also be provided by suppliers of an HCA when the HCA is first supplied to the workplace, if the sheet is amended, and to any person at the workplace upon request. The safety data sheet must also be obtained by the employer and provided to various affected persons, including any person involved in using, handling or likely to be exposed to the HCA at the workplace. The safety data sheet must be presented using 16 specific headings listed in the 2021 Regulations.

Labelling of hazardous chemical agents – Regulation 14B

This is a new regulation in the 2021 Regulations, which imposes different obligations on manufacturers and importers, suppliers, retailers and employers, regarding the labelling of hazardous chemical agents. An HCA is correctly labelled if the selection and use of label elements are in accordance with the GHS, and if the HCA is packed in a container with a label providing certain minimum information, including product identifier and, where applicable, the United Nations (UN)-correct shipping name and a signal word, hazard statement, precautionary statement and hazard pictogram consistent with the HCA's GHS classification.

Packaging of hazardous chemical agents – Regulation 14C

This is a new regulation in the 2021 Regulations. Packaging for an HCA must satisfy the relevant UN Recommendations on the Transport of Dangerous Goods with respect to packaging and fastenings, or the UN IMO International Maritime Dangerous Goods Code.

Disclosure of ingredient identity – Regulation 14D

This is a new regulation in the 2021 Regulations. Where the ingredient of an HCA causes the correct classification of the chemical to include a hazard class and hazard category, the identity of the ingredient must be disclosed. However, the chemical identity of the ingredient can be identified by its generic name if certain conditions are met – for example, if the identity of the ingredient is commercially confidential. When an ingredient of an HCA must be disclosed, the proportion of the ingredient in the hazardous chemical must also be disclosed, in line with specific requirements detailed in the regulation.

Disposal of hazardous chemical agents – Regulation 15

This is a new regulation in the 2021 Regulations. Employers must, as far as reasonably practicable, comply with certain requirements when disposing of HCAs. For example, the employer must:

- Recycle HCA waste
- Ensure that all collectable HCA waste is placed in containers that prevent the likelihood of exposure during handling
- Ensure that, if the services of a disposal contractor are used, the contractor also complies with the provisions of these regulations

Offences and penalties – Regulation 16

The offences and penalties now make provision for contravention of regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C and/or 14D. Any person who contravenes one or more of these provisions shall be guilty of an offence and liable, on conviction, to a fine or imprisonment for a period not exceeding six months and, in the case of a continuous offence, to an additional fine of R500 for each day on which the offence continues.

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