



**Transfer of
Substances**

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



Summary of Submissions: Group Standards for Not Otherwise Specified Substances (N.O.S)

June 2006

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1. Introduction

1.1 Background to the Consultation

This document reports on the submissions that were received on proposals to establish group standards for Not Otherwise Specified Substances (N.O.S). Group standards are a form of hazardous substances approval under Part 6A of the Hazardous Substance and New Organisms (HSNO) Act 1996.

ERMA New Zealand released for public consultation 12 group standards for N.O.S on 7 April 2006. Consultation closed on 24 May 2006. Notification of this consultation was via public notice in the four main metropolitan newspapers and the ERMA New Zealand web site.

The consultation document and proposed group standards, or a letter advising of the availability of these documents, was provided to 270 parties who were considered likely to have an interest in this consultation. This included companies who notified products under the Toxic Substances Act 1979, other industry sectors and associations, government departments, enforcement agencies and territorial authorities. The documentation was also available on the 'consultation page' of the ERMA New Zealand website.¹

Four submissions were received, of which two submitters requested to be heard. A hearing will be held on 14 June 2006.

The comments made by submitters are summarised in Section 2, along with the Agency's response. Where a submitter's comment resulted in a change to the group standard proposal, this is indicated in the table. Each submitter is identified numerically, and the name of the submitter given at the beginning of the table.

This summary of submissions has been provided to all parties who made a submission on the N.O.S group standards, major notifiers of N.O.S² and to the Hearings Committee of the Authority.³ It is also available from the ERMA New Zealand web site at <http://www.ermanz.govt.nz/hs/groupstandards/standards/nos.html>. A copy will be provided to any other interested party on request.

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¹ These documents remain available on the ERMA New Zealand web site:
<http://www.ermanz.govt.nz/consultations/gs/nos.asp>

² Notifiers with only a few NOTS have been advised by letter of the availability of this summary of submissions.

³ The Authority is the decision making body of ERMA New Zealand. It is made up of up to eight members appointed by the Minister for the Environment. The Hearings Committee is made up of selected members of the Authority with relevant experience in the subject area being considered for approval under the HSNO Act.

1.2 Moving NOTS

When group standards were released for consultation, notifiers were given a list of their products notified under the Toxic Substances Act 1979 (NOTS) associated with each standard. If a NOTS had been incorrectly assigned by ERMA New Zealand to a specific group standard, the notifier is able to reassign it to the appropriate group standard. If a notifier moves a NOTS from one group standard to another (or removes the NOTS from a group standard because they determine it to be non-hazardous) we asked in the consultation document for the notifier to advise us.

To assist notifiers reassign their NOTS, ERMA New Zealand has developed an excel template that can be accessed by emailing us at: NOTS@erманz.govt.nz.⁴ Once the notifier has recorded on the template the NOTS that need to be moved, they must email the completed template back to us for processing. This template will be available up until 30 June 2006.

Where a submitter requested that a NOTS be moved, this information is not provided in Section 2 because it is specific to that notifier and, in some cases, could result in the disclosure of confidential information. This moving of NOTS is independent of the scope and conditions of a group standard, and consequently has not resulted in any change to any of the group standard proposals.

Where notifiers requested as part of their submission that NOTS be reassigned, we will move them to the group standard(s) they indicated, and they do not need to use the template unless they have further changes to make.

1.3 Approval of Group Standards

The Hearings Committee of the Authority is responsible for considering and approving group standards. Copies of amended group standards will be provided to the Committee for consideration.⁵

As noted earlier, a copy of this summary of submissions has been provided to the Hearings Committee. Although Section 2 of this summary may indicate that an amendment has been made to the group standards as consulted on, it is the Hearings Committee that is the decision maker. That is, the Agency's recommendation that a group standard be changed as indicated in Section 2 requires final approval by the Authority.

The Hearings Committee is scheduled to consider the group standards for N.O.S substances on 14 June 2006. This consideration will follow the public hearing which has been requested by submitters.⁶ A notice of the Committee's decision will be placed on the ERMA New Zealand web site as soon as practicable after the consideration.

In order to allow for completion of the consultation programme for other group standards, each decision on the consultation products group standards will be a *decision in principle*. A further consideration will be held on 21 June, at which time final approval from the Authority will be given. Further information is available at <http://www.erманz.govt.nz/hs/groupstandards/standards/nos.html>.

⁴ The template and process operate in such a way that requires notifiers to contact ERMA New Zealand. This is to safeguard data confidentiality.

⁵ Group standards that were consulted on will be amended as indicated in Section 2.

⁶ This hearing is to be held on the morning of 14 June 2006 at the Waipuna Hotel and Conference Centre, Mt. Wellington, Auckland.

1.4 Gazetting of Group Standards and Staged Implementation

Following final approval by the Authority, group standards will be established by publication of a notice in the *New Zealand Gazette*, and will come into force on 1 July 2006. All NOTS that fit the scope of a group standard will become deemed approved hazardous substances at this time.

A full list of group standard proposals, for N.O.S substances is available from:
<http://www.ermanz.govt.nz/hs/groupstandards/list.html>.

Coinciding with the transfer of NOTS will be the commencement of a period of staged implementation. The details of staged implementation are given in Annex 1.

After 1 July 2006, ERMA New Zealand will write to all notifiers with a list of their NOTS that are deemed approved under group standards and the HSNO approval number for each group standard.

2. Submitter's Comments and Agency Response and Recommendations

Code to Submitters

No.	Submitter
1	Reckitt Benckiser
2	Employers and Manufacturers Association Inc.
3	HaS Expertise Ltd
4	3M New Zealand Limited

Submitter	Submission	Agency response and recommendation	Group standards amended
Allocation of NOTS to Group Standards and Scope of N.O.S. Group Standards			
1	Companies may not have the required resources to confirm that all their NOTS can be allocated to a group standard by the end of June. It is therefore important that ERMA make provisions for any NOTS which are later found not to fit into one of the group standards. We propose that ERMA allow for other NOTS not yet allocated to group standards, possibly by having a "catch-all" group standard for remaining NOTS. Can you also allow for the creation of further group standard annexes after 1 July 2006.	<p>The N.O.S group standards are the "catch-all" group standards. They cover every hazard combination (excluding class 4 and 5 substances which have their own group standards, and very high hazard (3.1A, 6.1A, 8.2A) substances). It is not essential that notifiers allocate their NOTS to a group standard by 1 July 2006. If a product does not fall within the scope of an existing use-specific group standard, then it should be covered by one of these N.O.S group standards.</p> <p>Group standards are a new approval mechanism under HSNO. This approvals mechanism will be in place after 1 July 2006. Industry (or any other party) can make an application to ERMA New Zealand for a group standard approval.</p>	No
2	We recognise these group standards are a catch all to pick up those products or substances that have not been	All N.O.S group standards have been created to capture those NOTS which had a unique hazard in relation to their use, or a use	No

Submitter	Submission	Agency response and recommendation	Group standards amended
	<p>captured under other group standards or transferred by some other means. We believe that it is important to not place additional controls that would be appropriate to the group standards already consulted on.</p>	<p>type which did not fit the scope of any of the other group standards that ERMA New Zealand has developed. Any product specific conditions that are included in product specific group standards are also applied the N.O.S group standards. These product specific conditions are included in Part 10 (Other Matters) of the group standards. No new additional conditions have been applied to the N.O.S. group standards that would not otherwise apply to the product specific group standard (if one existed).</p> <p>One important difference, however, is that, unlike product specific group standards, the N.O.S. group standards are closed off to new substances. This is because the N.O.S. group standards are intended solely as a “catch-all” for NOTS that are required to be transferred. They are not intended as an approval for new substances.</p>	
2	<p>It will be desirable for the movement of such group standards to appropriate group standards as soon as possible – regardless if a product needs to be moved to another existing group standard or another group standard created to pick up these products. May involve further consultation post 1 July 2006 however should be undertaken prior to 1 July 2007 to allow smooth transition to the new requirements where this is applicable.</p>	<p>ERMA New Zealand is not intending to create new group standards for NOTS that have been placed in the N.O.S. group standards.</p> <p>Whilst it would have been desirable to have had the products in the N.O.S group standards transferred in use-specific group standards, there was insufficient NOTS for their unique hazards to warrant the creation of such standards. The HSNO Act requires that a group standard must be an efficient and effective means of approval, and creating group standard for low numbers of NOTS was not efficient. As of 1 July 2006, NOTS in N.O.S. group standards will have been transferred and will therefore be HSNO approved substances. No further action is required on ERMA New Zealand’s part.</p> <p>If notifiers are concerned at having a NOTS in a N.O.S. group standard, they are advised to review the classification. In the event that the classification is incorrect, it is possible that the substance will be covered under the scope of a product specific group standard. If this is the case, then the notifier can reassign the NOTS to that product specific group standard.</p>	No

Submitter	Submission	Agency response and recommendation	Group standards amended
New Zealand Inventory of Chemicals			
1	<p>It appears that ERMA has compiled the inventory from chemicals included in the NOTS, registered products and lists of hazardous substances which have or will be transferred to HSNO. Hence chemicals which are themselves non-hazardous and those contained in non-hazardous substances may not have been included in the inventory. We urge ERMA to review their approach to the inventory, to ensure that it does include all chemicals currently present in New Zealand. To this end, it is Reckitt Benckiser's hope that ERMA will incorporate the Australian Inventory of Chemical Substances into the NZ inventory, since the NZ inventory will not be available for some time, and new products we are currently developing could contain substances that will be 'new' to NZ.</p> <p>The inventory has the potential to significantly delay the introduction of products containing 'new' chemicals. In the future it is expected that more and more chemicals will be 'new' to NZ, as this has been our experience with the Australian NICNAS scheme. The NZ notification process needs to be simple and fast. Reckitt Benckiser requests that NZ 'automatically' grant approval for new chemicals which are approved through NICNAS (including exemptions) and consider granting approval for new chemicals approved through the Canadian, EU and USA systems.</p>	<p>We are aware of the concerns of this and other submitters regarding the development of a New Zealand inventory of chemicals. The maintenance of an inventory is consistent with many other developed countries, including Australia, US and Europe, and forms an integral part of the risk management framework for group standards.</p> <p>In preparing the New Zealand inventory, it is our intention to assess the list of chemicals we have recorded on our working databases against the AICS and other countrywide inventories. Our expectation is that the New Zealand inventory will be amended for any obvious deficiencies.</p> <p>As noted by the submitter, the inventory will need to address the matter of non-hazardous chemicals. We are currently proceeding with having a working draft of an inventory in place by 1 July 2006. Nonetheless, it is recognised that further work will be required to finalise the inventory and on the process by which information on new chemicals should be reported to ERMA New Zealand and added to the inventory. It is our wish to work with industry in developing a fully functional and effective inventory of chemicals in New Zealand.</p>	No
Conditions for Packaging			
1	<p>The group standards' requirement for extensive application of child resistant packaging (not including products with irritancy hazard) remains inconsistent with international best practice. This extensive application of CRP means that a huge number of products which do not currently require CRP will require it in the future. Reckitt Benckiser supports</p>	<p>Since the initial development of group standards, we have amended the child resistant packaging provisions for group standards by removing the requirement for irritants to be in CRP.</p> <p>We acknowledge that there remains some disparity between the group standard CRP provisions and overseas packaging</p>	No

Submitter	Submission	Agency response and recommendation	Group standards amended
	<p>applying CRP “to substances for which there is a demonstrable and significant hazard to children so that the general public take the need for CRP seriously”. We encourage ERMA to consider CRP requirements in major trading partners and compare these requirements with what is currently being proposed for group standards.</p> <p>The Oxidising Substances suite of group standards currently include a requirement for child resistant packaging (CRP) for substances with HSNO classification 6.1D, 6.1E, 8.2B, 8.2C or 8.3A, when that substance is packaged in quantities of less than 2.5 L or 2.5 kg, unless being sold or supplied to a place of work where children do not have access and the substance is for use in that place of work.</p> <p>We request ERMA to review this requirement in the light of international best practice, and propose the following alternative options:</p> <ol style="list-style-type: none"> 1. Limit the requirement for CRP for the Oxidising Substances suite of group standards to skin corrosives (HSNO 8.2 classification), or 2. Provide an alternative compliance option until 2010 for packaging, similar to that provided for labelling, to allow the relevant packaging requirements of Australia, USA, Canada, the European Union or any other country as approved by the Authority. <p>The current group standards requirement for CRP is not consistent with international best practice, as demonstrated by the following summary of requirements in other jurisdictions.</p> <p>EU - Domestic use products only require CRP if, according to the Dangerous Preparations Directive, they are classified as:</p> <ul style="list-style-type: none"> - toxic (25mg/kg < LD50 oral < 200mg/kg), - very toxic (LD50 oral < 25mg/kg) or 	<p>requirements. Nonetheless, the current retention for CRP for acute toxicity (6.1D and 6.1E) and corrosivity will be retained, including for eye corrosivity (HSNO 8.3A). This is consistent with the Hazardous Substances (Packaging) Regulations. It is also consistent with the Ministry of Health <i>Code of Practice for Child-resistant Packaging of Toxic Substances</i> (1998). We do not consider that we should adopt overseas packaging provisions that are any less stringent than should already be in place under this code.</p> <p>In summary, group standards:</p> <ol style="list-style-type: none"> 1. will retain a CRP requirement for 6.1D, 6.1E and 8.3A substances; 2. not provide an alternative means of compliance similar to the 2010 labelling option. <p>The group standards provide for a period of staged implementation for packaging if they comply with the previous requirements in place under the former Toxic Substances Regulations.</p> <p>The issue of CRP is one of the matters that will be covered at a hearing by the Authority on Wednesday 14 June 2006.</p>	

Submitter	Submission	Agency response and recommendation	Group standards amended
	<ul style="list-style-type: none"> - skin corrosive (equivalent to a HSNO 8.2 classification), or - if they present an aspirational hazard, unless an aerosol or in a container fitted with a sealed spray attachment - if they contain methanol at > 3% - if they contain dichloromethane at > 1% <p>USA - The USA has a list of specific substances, with conditions, which require CRP, in 16 CFR 1700.14. The focus is on medicines and products with low viscosity hydrocarbon liquids, along with a range of other particular chemicals.</p> <p>Australia - In Australia, the Standard for the Uniform Scheduling of Drugs and Poisons contains a list of substances, with conditions, which require CRP.</p>		
1	<p>Specific Packaging Requirements for Certain 6.1 Substances</p> <p>This section states:</p> <p>Any packaging containing a HSNO 6.1D substance must be permanently identified as containing a toxic substance unless the substance as packaged is restricted to a place of work.</p> <p>Reckitt Benckiser believes that this requirement should be grouped together with alternative compliance measures for labelling and packaging, and that products which meet the labelling and packaging requirements of Australia, Canada, EU or USA should be exempted from this requirement until the end of 2010.</p>	<p>The current condition is based on requirements in the HSNO (Identification) Regulations, which were themselves based on the provisions in the former Toxic Substances Regulations. Similar provisions also exist internationally. Therefore, the intent of this condition will be retained.</p> <p>The condition will, however, be amended to limit the requirement to liquid substances (as per the Toxic Substances Regulations), and will provide an alternative means of compliance through to 2010. This date will align with the alternative compliance requirement for labelling. Alternative compliance will be with the equivalent provision in Australia, the EU or any other country approved by the Authority.</p> <p>The Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP) sets permanent identification requirements for Scheduled poisons, and requires compliance with Australian Standard 2216 (1997). This standard sets a number of requirements, including</p>	Yes

Submitter	Submission	Agency response and recommendation	Group standards amended
		<p>tactile identification (embossing and ribbing). The EU also has requirements for tactile identification for toxic chemicals sold to the public (Council Directive 92/32/EEC).</p> <p>ERMA New Zealand does not interpret permanent identification to mean a package has to be embossed. Permanent identification could include indelible labelling or printing in a colour in distinct contrast to the background colour.</p> <p>Further guidance will be provided after transfer on what constitutes permanent identification under the requirements of this condition.</p>	
Conditions for Disposal			
1	<p>We are pleased that ERMA will be reviewing and revising the Disposal sections of the Cosmetics and Domestic Cleaning Products group standards to make these provisions workable for the domestic situation. Reckitt Benckiser requests that practical provisions are included in the Oxidising Substances group standards to accommodate disposal of substances used in the domestic situation. There may be other group standards which require a clause to allow for different disposal requirements when the substances are used in the home.</p> <p>Reckitt Benckiser is particularly concerned about requirements to treat the substance before disposal, and the need to render the packaging incapable of containing any substance. We also believe that consumers should be encouraged to recycle packaging for which recycling facilities are in place, as this is of benefit to the environment.</p>	<p>The disposal condition for packaging (Part 7 of the group standard) has been amended by the inclusion of a new subclause that provides for disposal via domestic refuse collections. This subclause states:</p> <p><i>Packaging (that may or may not contain any residual substance) that is lawfully disposed of by householders or other consumers through a public or commercial waste collection service is a means of compliance with subclause (2).</i></p> <p>[Subclause (2) being the requirements that are set for disposal]. No similar provision is given in the disposal of substance section as a consumer is unlikely to dispose of the substance other than in the package. The new subclause (above) allows for residual levels of a substance to be in the package.</p>	Yes
Conditions for Safety Data Sheets			
1	<p>Australian safety data sheets require a 16-header format, and Reckitt Benckiser understands that ERMA is supportive of Australian SDSs being accepted in New Zealand. Some</p>	<p>The submitter is correct in that ERMA New Zealand wishes to see a universal adoption of the 16 header format for safety data sheets. There should be no reason why an Australian SDS would not be</p>	No amendment required

Submitter	Submission	Agency response and recommendation	Group standards amended
	<p>additions to the Australian SDS would be necessary for it to be NZ-compliant, namely the NZ poisons information number, the HSNO approval number or group standard name/number, relevant exposure controls and possibly enough information to enable the New Zealand importer, supplier or manufacturer to be contacted, either in person or by telephone.</p>	<p>acceptable in New Zealand, provided that the format as set out in the group standard was adhered to. There will be a need for a small amount of New Zealand specific information (as identified by the submitter), but we do not consider this to be unreasonable and can be included in the same SDS used in Australia.</p> <p>The group standard conditions for SDS are consistent with the GHS provisions and the NZCIC Code of Practice for Safety Data Sheets.</p>	
3	<p>The Safety Data Sheet (SDS) clauses in all of the group standards are unnecessarily prescriptive and allow no flexibility to their preparation. There is no benefit to be gained from this inflexibility. In addition, the requirement to comply with a code of practice that is not currently available is not consistent with the consultation process (i.e. how can we comment on the group standard requirements for SDS when we are not able to view one of the compulsory parts of the clauses).</p> <p>We seek changes to the SDS clauses to allow greater flexibility and reference to the code of practice as one option for compliance. To ensure consistency internationally, it would be appropriate to include SDS information in the exemption which allows or labelling and packaging to comply with international standards/legislative requirements. At the minimum, compliance with the HSNO regulations should be equivalent.</p>	<p>The inflexibility referred to by this submitter was in regard to clause 3(5) of the group standard, which required that: <i>“Information required on a safety data sheet must be provided under the following headings”</i>. This has been amended to <i>“... must be provided under the following general headings”</i> (emphasis added).</p> <p>The condition that required a safety data sheet to be consistent with the requirements of a code of practice approved by the Authority has been removed.</p> <p>The group standards set out the requirements for SDS that are consistent with the GHS, which are based on the 16 header format. This format is recognised as international best practice. The HSNO regulations, in contrast, do not stipulate the 16 header format. For this reason, we will not provide an alternative means of compliance by way of the HSNO regulations. ERMA New Zealand wishes to encourage compliance for all SDS on the 16 header format.</p>	Yes
Conditions for Advertising			
1	<p>Reckitt Benckiser submits that the advertising requirements proposed in the group standards, are unnecessary for substances (products) which are sold through retail outlets and other outlets where the consumer has the opportunity to read the label before purchasing the product. The label contains the relevant warnings and safety statements, and the consumer has access to the warnings etc before they</p>	<p>The group standard condition for advertising has been amended so that it only applies to products that are advertised to members of the public, and the person to whom the advertising is directed is not provided with a reasonable opportunity to read and consider the information required to be on the product label prior to purchase of the substance.</p>	Yes

Submitter	Submission	Agency response and recommendation	Group standards amended
	decide to purchase. We understand that ERMA is considering removing the advertising requirements for products where the consumer has the opportunity to read the label prior to purchase, and Reckitt Benckiser supports that change.	Advertising of products that are purchased through retail stores will need to comply with the General Information requirements set out in Part 1 of the group standard conditions.	
Miscellaneous			
4	3M New Zealand Limited agrees with principles of group standards. Applying group standards, and further sub grouping products (substances) according to their hazard classifications will eliminate the requirement to assess every product individually and make it simpler to ERMA develop a register of "Hazardous Substances". Group Standards will also reduce the compliance costs to the manufacturer or importer/supplier. We also approve of the modification of to the ecotoxicological controls for those products, triggering ecotoxic degrees of hazard, but are non-pesticidal substances used in industrial, domestic or otherwise contained indoor environments.	Support noted.	No amendment required

Annex 1: Staged Implementation for NOTS

All group standards will contain provisions for staged implementation. These provisions will apply to notified toxic substances (NOTS) that are transferred from the transitional provisions to the main framework of the HSNO Act. The purpose of staged implementation is to allow importers, manufacturers and users of N.O.S a period of time to become familiar with the new group standard conditions, and to progressively implement these conditions.

The key dates for staged implementation are set out in the table below.

1 July 2006	NOTS transferred to HSNO. Six month period commences before any group standard conditions apply. Persons continue to comply with current regulatory requirements
1 January 2007	Approved handler test certificates required (either deemed ¹ or full five year certificate) ² Compliance required with all group standard conditions, with the exception of conditions for: <ul style="list-style-type: none"> ➤ Test certificates for hazardous substance locations² ➤ Stationary bulk container systems ➤ Emergency management² ➤ Signage² ➤ Labelling, safety data sheets and packaging
1 July 2007	Compliance required with emergency management conditions ² (fire extinguishers, response plans and secondary containment)
1 January 2008	Test certificates required for hazardous substance location ²
1 July 2008	Report required from test certifier for existing stationary bulk container systems Compliance required with conditions for: <ul style="list-style-type: none"> ➤ Labelling^{3,4} ➤ Safety data sheets ➤ Signage² ➤ Packaging
1 January 2009	Full 5 year approved handler test certificate required
1 July 2009	Test certificate required for existing stationary bulk container systems
31 December 2010	Product labels are compliant to this date if they comply with the labelling requirements of Europe, Australia, USA or Canada ⁴

1. A person with two years experience in handling hazardous substances can deem themselves as an approved handler to 31 December 2008.
2. Staged implementation provisions may not apply for approved handler test certificates, location test certificates, emergency management and signage if compliance is already required for a similar class of hazardous substance (see section 'If existing HSNO Provisions Apply').
3. Other than for substances that comply with the labelling requirements of Europe, Australia, USA or Canada.
4. A group standard condition proposes that a 4 year period be allowed for compliance with labelling, provided that the product labels comply with the regulatory requirements for labelling that apply in these countries. This provision will apply to new products as well as NOTS.

If Existing HSNO Provisions Apply

Where existing HSNO provisions apply for approved substances (e.g. dangerous goods transferred on 1 April 2004), then there will be no staged implementation for an approved handler test certificate, location test certificate, emergency management or signage if persons are already required to hold test certificates or have emergency management provisions and signage in place for the same class of substance. In this situation, compliance should have already been achieved. Therefore, full compliance for the NOTS is required by 1 January 2007. All other provisions for staged implementation (e.g. labelling, packaging etc) will apply as set out above. Full staged implementation (including for test certificates, emergency management and signage) will apply if **new classes** of substances are transferred as NOTS.

For example, a person who imports or manufacturers a class 3.1 flammable NOTS will not receive staged implementation for test certificates, emergency management or signage if they also store class 3.1 flammables that are already HSNO approved substances and for which they require test certificates, emergency management and signage. If, however, they are manufacturing or storing NOTS that are of a different class (e.g. class 5 oxidising substances), then staged implementation will apply as set out above, but only for that new class.

Further Information

Further details on staged implementation and general compliance requirements will be provided to notifiers in the lead-up to transfer. For other compliance information, you can contact the ERMA New Zealand Hazardous Substance Compliance Line, by:

Phone: 0800 376 234, or

Email dginfo@ermanz.govt.nz.