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1	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Definitions "Hazardous Chemical Agent"	<u>Comment:</u> A hazardous chemical agent is defined in the Draft Regulations with reference to the annexures thereto as follows: "hazardous chemical agent" or "HCA" means a GHS aligned chemical agent as provided in Annexure 1; We refer to Annexure 1 Table 2 - GHS HAZARD CLASSES – HEALTH HAZARDS This table refers to the usual list of health hazards arising from exposure to HCS including carcinogenicity, reproductive toxicity, mutagenicity. In the Purple Book of GHS classifications each of these categories has subcategories. However the list provided in this table of the Draft Regulations does not include all the categories and subcategories provided in the GHS classification system. <u>Proposal</u> It is submitted that all categories given under the GHS system should be included in Annexure 1 so as to cover all pesticides where these health impacts have been accepted/determined under the GHS system. For example under the health impact "Aspiration hazard" the table stipulates only one subcategory ie Category 1, whereas the GHS system indicates Category 1 and Category 2. The basis of the

		exclusion of the second category in the Draft Regulations is not explained nor is it justifiable. [1] This is merely an example. A reasonable measure as envisaged by Section 24 of the South African Constitution would have been the inclusion of all the categories and subcategories mentioned in the GHS system, in Annexure 1. This category was included in the 2021 Regulations and it is not clear why it has been removed. All categories that were included in the 2021 regulations should be retained. <u>Proposed draft</u> GHS Table 2 - GHS HAZARD CLASSES – HEALTH HAZARDS should include all categories mentioned in the Purple Book GHS Table 2 - GHS HAZARD CLASSES – HEALTH HAZARDS should include reference to pesticides. These have been included in several jurisdictions under the adoption of the GHS classification system. See for a list of jurisdictions https://www.chemsafetypro.com/Topics/GHS/GHS_for_pesticides.html
	"UN Globally Harmonized System" or "GHS" means the International Maritime Organisation, International Maritime Dangerous Goods (IMDG) Code, which was developed as an international code, as an agency of the United Nations, for the maritime transport of dangerous goods in packaged and bulk form, with particular reference to the segregation of	<u>Comment:</u> This definition is incorrect and appears to be an error. Although the UN GHS was originally developed as a code for the transportation internationally of maritime dangerous goods it is now referred to more broadly as an internationally agreed system that provides countries with the regulatory building blocks to develop or modify existing national programmes. It sets criteria for the classification of chemical hazards and offers protective measures through labels and safety data sheets.[2] <u>Proposed wording:</u>

[1] Other examples under Table 2: GHS HAZARD CLASSES – HEALTH HAZARDS that have been unjustifiably excluded and which appear in the purple book include:
(i) category 5 for acute toxicity which deals with substances that may be harmful if swallowed, inhaled or if in contact with the skin;
(ii) under skin irritation category 3 is excluded ie mild irritation,
(ii) under serious eye damage category 2B (mild irritation to the eyes) has been excluded);

[2] https://unitar.org/sustainable-development-goals/planet/our-portfolio/globally-harmonized-system-classification-and-labelling-chemicals#:~:text=The%20Globally%20Harmonized%20System%20of,or%20modify%20existing%20national%20programmes.

	incompatible substances, as may be updated from time to time;	The 2021 regulations had the correct definition and should be retained. *"UN Globally Harmonized System" or "GHS" means the Globally Harmonized System of classification and labelling of chemicals, a guidance document developed by the United Nations for standardising and harmonising the classification and labelling of chemicals globally, as may be updated from time to time, commonly known as the UN Purple Book;*
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
2	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	2(2): Meaning of "self employed"	<u>Comment:</u> "Self-employed" is not defined in the regulations. A farmer who for example uses casual labour might regard themselves as self-employed and therefore would not need to apply the provisions of regulations 14 and 17(1), as they do not apply to self-employed persons. (Regulation 14 deals with medical surveillance and reg 17 deals with information and training, both highly relevant to the protection of farm workers, an extremely vulnerable class of employees). <u>Proposal:</u> 2(3) The exclusion provided in regulation 2(2) shall not apply to farmers or any business, trade or concern where agricultural chemicals as envisaged in Act 36 of 1947 are used by employees working on either a temporary or permanent basis.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
3	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	"competent person"	<u>Comment:</u> The definition for 'competent person' is insufficient and partially incorrect.

		Proposal: Suggest the following definition as described in the Occupational Health and Safety Act, and National Institute for Occupational Safety and Health (NIOSH); '*one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them*'. The competent person should be a SACNASP registered and qualified toxicologist or envirotoxicologist. This definition is used globally by most Occupational Health & Safety Institutions as it is based on the definition in the OSHA and in line with ISO 9001:2015, clause 7.2 (https://www.iso.org).
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
4	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	4(1)(a)(ii)	Comment: The Competent person should be a SACNASP registered and qualified toxicologist or envirotoxicologist - this comment was addressed in the comments under the definition section above. Proposal: The proposal above is relevant for both
	4(1)(a)(iii)	Comment: The regulation should refer to co-formulants Proposal The regulation should be worded as follows: *"4(1)(a)(iii)- classified for the HCA, in accordance with regulation 3;* ***and including co-formulants 1a and 1b."***
	4(1)(a)(iv)	Comment: The regulation should refer to the date, as missing dates is an exploitable loophole Proposal The regulation should be worded as follows:

		"4(1)(a)(iv) reviewed at least once every five years, and the date of the last review clearly indicated."
	4(1)(a)(v)	<u>Comment:</u> 4(1)(a)(v) is unacceptably vague -leading with difficulties in enforcement - as regards the words "whenever necessary." Reference to co-formulants should be added. <u>Proposal</u> The regulation should be worded as follows: *"4(1)(a)(v): amended whenever necessary, (INSERT: **and sufficiently regularly)** in order to ensure that it contains current and correct information aligned to its GHS classification required in regulation 3, which includes new data regarding the hazard presented by an HCA, (INSERT: **including co-formulants 1a and 1b,**) that changes its classification in a category or subcategory of a hazard class, or results in its classification in another hazard class."*
	4(1)(a)(vii)	<u>Comment:</u> An additional sub-regulation should be added – requiring that SDS should appear in the language most spoken in each province as well as English so it is accessible for the workforce. <u>Proposal</u> The regulation should be worded as follows: ***"4(1)(a)(vii): should appear in the language most spoken in each province as well as English so it is accessible for the workforce."***
	4(1)(d)(iii)	<u>Comment</u> The regulation should ensure that the information is provided to Poison Information Centre staff. <u>Proposal</u> The regulation should be worded as follows: *"4(1)(d)(iii): any health practitioner (INSERT: **or Poison Information Center staff**)who needs the information to treat a person who has been exposed to the HCA."*

	4(2): *4(2) Sub regulation (1) does not apply to a manufacturer or importer of an HCA who has not manufactured or imported the HCA in the past 5 years.*	<u>Comment</u> This draft regulation creates a loophole for the potential supply of out of date stock, with limited safeguards. It means that a manufacturer or importer of HCA pesticides and other agricultural remedies who has stock older than five years old does not need to provide a SDS to a supplier or anyone likely to be affected by that stock. It results in the supplier who has obtained that stock without any SDS either not being obliged, or not being able to supply an SDS to the employer, who then cannot supply the SDS to the employees who use it and who are ultimately likely to be harmed by these chemicals. This amendment opens the gate to abuse as old stock can be sold and disposed of without any SDS being supplied by importer, manufacturer, and employer. In practice it may be difficult for law enforcement to determine which stock is older than 5 years and what is new, when investigating. <u>Proposal</u> Sub regulation 4(2) should be deleted
	4(3)(c)(3): *composition/information on ingredients;*	<u>Comment</u> The regulation should set out clearly the criteria for disclosure of composition/information on ingredients, as currently there are many instances of poor levels of information supplied for example **CAS numbers may be missing; ingredient concentration ranges may be too broad; ingredients are sometimes grouped together.**

		See minimum requirements for the 16 headings provided by the GHS[3]
	4(3)(d)	<u>Comment:</u> This sub-regulation should require information as to the local poison information centre to be included and should be worded as follows: ***"4(3)(d) first aid measures and the telephone***

[3] Core Content of A GHS Safety Data Sheethttps://www.chemsafetypro.com/Topics/GHS/GHS_safety_data_sheets.htmlhttps://www.chemsafetypro.com/pdf/Minimum_Info_GHS_SDS_Safety_Data_Sheets.pdf

38 - Table 1.5.2 Minimum information for an SDS 1. Identification of the substance or mixture and of the supplier (a) GHS product identifier; (b) Other means of identification; (c) Recommended use of the chemical and restrictions on use; (d) Supplier's details (including name, address, phone number etc.); (e) Emergency phone number. 2. Hazards identification (a) GHS classification of the substance/mixture and any national or regional information; (b) GHS label elements, including precautionary statements. (Hazard symbols may be provided as a graphical reproduction of the symbols in black and white or the name of the symbol e.g. "flame", "skull and crossbones"); (c) Other hazards which do not result in classification (e.g. "dust explosion hazard") or are not covered by the GHS. 3. Composition/ information on ingredients Substance (a) Chemical identity; (b) Common name, synonyms, etc.; (c) CAS number and other unique identifiers; (d) Impurities and stabilizing additives which are themselves classified and which contribute to the classification of the substance. Mixture The chemical identity and concentration or concentration ranges of all ingredients which are hazardous within the meaning of the GHS and are present above their cut-off levels. NOTE: For information on ingredients, the competent authority rules for CBI take priority over the rules for product identification. 4. First-aid measures (a) Description of necessary measures, subdivided according to the different routes of exposure, i.e. inhalation, skin and eye contact and ingestion; (b) Most important symptoms/effects, acute and delayed. (c) Indication of immediate medical attention and special treatment needed, if necessary. 5. Fire-fighting measures (a) Suitable (and unsuitable) extinguishing media. (b) Specific hazards arising from the chemical (e.g. nature of any hazardous combustion products). (c) Special protective equipment and precautions for fire-fighters. 6. Accidental release measures (a) Personal precautions, protective equipment and emergency procedures. (b) Environmental precautions. (c) Methods and materials for containment and cleaning up. 7. Handling and storage (a) Precautions for safe handling. (b) Conditions for safe storage, including any incompatibilities. 8. Exposure controls/personal protection (a) Control parameters e.g. occupational exposure limit values or biological limit values. (b) Appropriate engineering controls. (c) Individual protection measures, such as personal protective equipment. 9. Physical and chemical properties (a) Appearance (physical state, colour etc); (b) Odour; (c) Odour threshold; (d) pH; (e) Melting point/freezing point; (f) Initial boiling point and boiling range; (g) Flash point; (h) Evaporation rate; (i) Flammability (solid, gas); (j) Upper/lower flammability or explosive limits; (k) Vapour pressure; (Cont'd on next page) Copyright@United Nations 2013. All rights reserved - 39 - Table 1.5.2 Minimum information for an SDS (cont'd) 9. Physical and chemical properties (cont'd) (l) Vapour density; (m) Relative density; (n) Solubility(ies); (o) Partition coefficient: n-octanol/water; (p) Auto-ignition temperature; (q) Decomposition temperature; (r) Viscosity. 10. Stability and reactivity (a) Reactivity (b) Chemical stability; (c) Possibility of hazardous reactions; (d) Conditions to avoid (e.g. static discharge, shock or vibration); (e) Incompatible materials; (f) Hazardous decomposition products. 11. Toxicological information Concise but complete and comprehensible description of the various toxicological (health) effects and the available data used to identify those effects, including: (a) information on the likely routes of exposure (inhalation, ingestion, skin and eye contact); (b) Symptoms related to the physical, chemical and toxicological characteristics; (c) Delayed and immediate effects and also chronic effects from short and long term exposure; (d) Numerical measures of toxicity (such as acute toxicity estimates). 12. Ecological information (a) Ecotoxicity (aquatic and terrestrial, where available); (b) Persistence and degradability; (c) Bioaccumulative potential; (d) Mobility in soil; (e) Other adverse effects. 13. Disposal considerations Description of waste residues and information on their safe handling and methods of disposal, including the disposal of any contaminated packaging. 14. Transport information (a) UN number; (b) UN proper shipping name; (c) Transport hazard class(es); (d) Packing group, if applicable; (e) Environmental hazards (e.g.: Marine pollutant (Yes/No)); (f) Transport in bulk (according to Annex II of MARPOL 73/78 and the IBC Code); (g) Special precautions which a user needs to be aware of, or needs to comply with, in connection with transport or conveyance either within or outside their premises. 15. Regulatory information Safety, health and environmental regulations specific for the product in question. 16. Other information including information on preparation and revision of the SDS Copyright@United Nations 2013. All rights reserved

		number and details of the applicable poison information centre."
	4(7): *(7) The GHS product identifier must appear on each page of an SDS.*	Comment: The regulation has insufficient detail and should therefore should include information on the production date and SDS update date (so that it is known when updates are due and whether SDS has been updated) as well the Poison Information Centre phone number on each page, as pages often go missing**.** Proposal *"4(7) The GHS product identifier must appear on each page of an SDS together with (INSERT:* ***production date, SDS update date and the Poison Information Center phone number.")***
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
5	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	5. Labelling of Hazardous Chemical Agents. *(1) With regard to labelling of an HCA- (a) a manufacturer or importer of an HCA must ensure that the HCA is correctly labelled as soon as practicable after manufacturing or importing;* *(b) a supplier of an HCA must not supply an HCA, if it is not correctly labelled;* *(c) a retailer of an HCA must not supply consumer products containing HCAs, to be used in a workplace,*	Comment- regulation 5(1)(a) and (b): The requirement of labelling *"as soon as practicable after manufacturing"* is too vague and will lead to problems with enforcement. It is suggested that the labelling be done after manufacturing and before being sold. Proposed wording *5(1) (a) a manufacturer or importer of an HCA must ensure that the HCA is correctly labelled* ***~~as soon as practicable~~*** *after manufacturing or importing (INSERT:* ***and before placing the product on the market for sale")*** *5(1) (b) a supplier of an HCA must not supply an HCA, if it is not correctly labelled (INSERT:* ***including product identifier)*** ***……*** Comment- regulation 5(1)(c):

	if they are not correctly labelled; and *(d) an employer must- …. (iii) ensure that when an HCA is transferred or decanted at the workplace, from its original container into a destination container, the destination container is correctly labelled for that HCA; and …* *(2) Subject to the provisions of sub regulation (1) an HCA is correctly labelled, if the selection and use of label elements is in accordance with the GHS and is packed in a container that has a label- (a) that includes- (i) the product identifier; (ii) here applicable the UN proper shipping name; (iii) the chemical identity of all ingredients, contributing to the final GHS classification of the HCA; (iv) the name, address, business and telephone number of the manufacturer; or the importer; (v) an emergency telephone number; (vi) applicable signal word; (vii) hazard statement; (viii) precautionary statement; and (ix) hazard pictogram consistent with the GHS; (b) which may include- (i) the quantity of the HCA in the package, unless this quantity is specified elsewhere on the package; (ii) the quantity of each HCA ingredient; (iii) any information about the hazards, first aid and emergency procedures relevant to the HCA, not*	It is suggested that the regulation apply to all consumer products, not just those that are used in the workplace. In particular since working from home has become widespread since the COVID epidemic, home and workplace are difficult to distinguish. Proposed wording: *(c) a retailer of an HCA must not supply consumer products containing HCAs~~, to be used in a workplace~~, if they are not correctly labelled; and* …….. Comment- regulation 5(1)(d)(iii): This sub regulation should be removed - HCA's should not be decanted at all. It is also against Act 36 to decant. It is suggested that this regulation be deleted and replaced with the requirement that manufacturers must ensure that their products are manufactured in the right size containers. …….. Proposed wording of aspects of regulation 5(2) **indicated in bold as deletions and insertions** The following changes to regulation 5(2) are recommended for greater clarity and enforceability: *5.2 Subject to the provisions of subregulation (1) an HCA is correctly labelled if the selection and use of label elements is in accordance with the GHS and is packed in a container that has a label* *(iii) the chemical identity of all ingredients (INSERT**: including co-formulants**, contributing to the final GHS classification of the HCA;* *(v) ~~an emergency~~(INSERT**: " the Poison Information Helpline"** telephone number;* *(vi) ~~applicable~~ signal word;* *(ix) hazard pictogram**s** consistent with the GHS;* Comment on 5(2)(b)(vi).

	otherwise included in the hazard statement or precautionary statement; (iv) first aid measures; (v) classification of the HCA, made in accordance with regulation 3; and (vi) an expiry date, where applicable.	This is a very important requirement for ensuring responsibility and accountability for expired hazardous substances in particular pesticides. It is suggested therefore that regulation 5(2)(b)(vi). should be moved to the section dealing with mandatory requirements ie 5(2)(a), and indicated /renamed sub regulation 5(2)(a)(x) Proposed changes: 5(2)(a)(x) *an expiry date**~~, where applicable~~** *(INSERT: **"and batch number"*** *(ix) hazard pictogram**s (plural)** consistent with the GHS;* …… General comment for regulation 5 - there is currently no review process to ensure GHS compliance. Labels MUST be reviewed and approved as compliant with a license for the label from the department. Currently companies are claiming compliance erroneously. Proposal **Add regulation 5.3 to include a review process of the label to ensure GHS compliance and issue a license/permit to sell.**
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
6	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	6. Packaging of Hazardous Chemical Agents *(1) Packaging for an HCA must satisfy the relevant requirements of the UN Transport of Dangerous Goods, with respect to packaging and fastenings, or where applicable the UN IMO International Maritime Dangerous*	Comment on regulation 6(1): Reference to the words "as soon as reasonably practicable" should be removed as these words introduce vagueness and difficulties of enforcement into the regulations. Labels on packages should be clearly visible and properly attached to packaging to prevent accidental failure to properly identify the hazardous nature of the product while working with it.

	Goods Code, including the following requirements- *(a) The manufacturer or importer of an HCA must ensure that the HCA is correctly packed, as soon as reasonably practicable after manufacturing or importing, where correctly packed means- (i) it is in sound condition; (ii) durably and legibly marked; (iii) will safely contain the chemical for the time the chemical is likely to be packed; (iv) is made of material that is compatible with, and will not be adversely affected by the chemical; (v) the packaging and fastenings are strong and solid throughout, to ensure that they will not loosen and will meet the normal stresses and strains of handling; and (vi) it does not usually contain food or beverages and cannot be mistakenly identified as containing food or beverages.* *(b) The employer or self-employed person must only receive, use, handle or store an HCA if it is correctly packed, as contemplated in subregulation (1).* *(c) An employer or self-employed person must, as far as reasonably practicable, ensure that a container or a vehicle in which an HCA is transported, is clearly identified and in compliance with the National Road Traffic Act, 1996 (Act No. 93 of 1996).*	<u>Proposed changes indicated in **bold:**</u> *6(1)(a) The manufacturer or importer of an HCA must ensure that the HCA is correctly packed (INSERT **and the label is visible**,) **~~as soon as reasonably practicable~~** after manufacturing or importing, where correctly packed means-* *(ii) durably and legibly marked; and (INSERT **a label of the product is visible and securely on the packaging at all times.**)* *(iii) will safely contain the **~~chemical~~** (INSERT **HCA)** for the time the **~~chemical~~** (INSERT **HCA)** is likely to be packed;* *(b) The employer or self-employed person must only receive, use, handle or store an HCA if it is correctly packed (INSERT **and labelled**,) as contemplated in subregulation (1)*

Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
7	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	7. Disclosure of ingredient identity (1) Where an ingredient in an HCA causes the correct classification of the chemical agent, in terms of regulation 3 to include a hazard class and hazard category referred to in- *…..* *(c) For all other cases not included in sub regulation (1)(b), the ingredient must be disclosed by its chemical identity.*	<u>Comment:</u> The disclosure of ingredient identities should include HCA **and its co-formulants**, as these may be highly toxic and contribute to increasing toxicity overall. <u>Proposal:</u> *"7(1)(c) For all other cases not included in sub regulation (1)(b), the ingredient**s** (INSERT: **and active co-formulants)** must be disclosed by its chemical identity."*
	7(2) Where an ingredient of an HCA must be disclosed in terms of sub regulation (1)(a), the proportion of the ingredient to the hazardous chemical must be disclosed if- (a) the exact proportion of the ingredient is not commercially confidential, where the exact proportion of the chemical is expressed as a percentage	<u>Comment</u> The syntax i.e. grammatical construction of draft regulation 7 (2) is overly complex, convoluted and difficult to understand and should be drafted in plain language, understandable to employers and employees who might not be mother tongue English speakers or familiar with legal language. <u>Proposal:</u> Retain the formulation of the 2021 regulations which are as follows: *(3) Where an ingredient of an HCA must be disclosed in terms of sub regulation (1)(a), the*

	by weight or volume; or (b) the exact proportion of the ingredient is commercially confidential in terms of the following ranges within which the exact proportion fits, expressed as a percentage by weight or volume- (i) <15%; (ii) 15 to 70%; (iii) >70%; or (iv) a range that is narrower than the ranges provided for in (i), (ii) or (iii).	*proportion of the ingredient to the hazardous chemical must* *be disclosed as follows:* *(a) Where the exact proportion of the ingredient is not commercially confidential, the exact proportion is expressed as a percentage of the chemical by mass or volume; or* *(b) where the exact proportion of the ingredient is commercially confidential, the exact proportion is expressed as a percentage of the chemical by mass or volume in terms of the following ranges* *within which the exact proportion fits:* *(i) < 10%;* *(ii) 10 to 30%;* *(iii) 30 to 60%;* *(iv) > 60%;* *(v) a range that is narrower than the ranges provided for in subparagraph (i), (ii), (iii) or (iv).* <u>Comment on ranges given in draft regulation 7(2)(b)(ii)</u> These ranges are too wide and cannot inform toxicity accurately, for example: Sodium hypochlorite <15%, includes "<5% = Slightly irritant", and ">10% = Very irritant". Likewise, 15-70% is an extremely wide range. It is suggested that the ranges be amended to depict smaller intervals. There is also no explanation, or justification given for changing the ranges provided in the 2021 regulations. <u>Proposal</u> The ranges set out in the 2021 regulations should be retained. These are: *"14D(3)(b) - where the exact proportion of the ingredient is commercially confidential, the exact proportion is expressed as a percentage of the chemical by mass or volume in terms of the following ranges* *within which the exact proportion fits:* *(i) < 10%;* *(ii) 10 to 30%;* *(iii) 30 to 60%;* *(iv) > 60%;* *(v) a range that is narrower than the ranges provided for in subparagraph (i), (ii), (iii) or (iv).*

Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
8	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	<u>8. Disposal of Hazardous Chemical Agents</u> *(1) An employer must, as far as is reasonably practicable, ensure that all HCA waste is classified and disposed of as hazardous waste in terms of the following legislation, as updated from time to time-* …… *(4) Ensure that all employees involved in the collection, transport and disposal of HCA waste, who may be exposed to that waste, are provided with suitable personal protective equipment.* …… *8(6) Expired products to be taken back by the manufacturer and disposed of as hazardous waste in accordance with the extended producer responsibility act 2023.*	<u>Comment:</u> The use of the words *"as far as is reasonably practicable"* introduces vagueness into the regulation and makes it unenforceable, and should therefore be deleted. <u>Proposal:</u> <u>8. Disposal of Hazardous Chemical Agents</u> *(1) An employer must, **~~as far as is reasonably practicable,~~** ensure that all HCA waste is classified and disposed of as **hazardous** waste in terms of the following legislation, as updated from time to time-* (4) Ensure that all employees involved in the collection, transport and disposal of HCA waste, who may be exposed to that waste, are provided with suitable personal protective equipment **and informed of the risks.** ……. <u>Proposal:</u> <u>The following sub regulation should be added</u> ***8(6) Expired products to be taken back by the manufacturer and disposed of as hazardous waste in accordance with the extended producer responsibility regulations.*** [4] **Annexure 1**

[4] Regulations regarding Extended Producer Responsibility, 2020 published under Government Notice R.1184 in Government Gazette 43879 on 5 November 2020 in terms of the NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 (ACT NO.59 OF 2008)

		<u>Comment:</u> HCA's should be grouped into chemical classes as per international trends and according to GHS, this will simplify the tables as the GHS classifications are the same for the same classes of the chemicals. For example, grouping the organophosphates together, and then listing the chemicals would make the tables more user-friendly and in line with international trends <u>Proposal:</u> Group the chemicals according to their classes according to international trends.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
9	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	9. Inventory for Hazardous Chemical Agents *(1) An employer must ensure as far as reasonably practicable that-* *(a) an inventory of HCAs used, handled or stored at the workplace is prepared and kept at the workplace; and…*	<u>Comment:</u> "inventory" requires definition and a useful definition to use is '*A chemical inventory is a (simple or complex) database including all chemical substances and mixtures used in a company. It is used to compile all relevant information on the identity, classification, storage, safe use of substances and mixtures*' (https://www.fitreach.eu/content/). The words *"as far as reasonably possible"* should be deleted as they introduce vagueness and unenforceability into the regulations <u>Proposed draft:</u> *(1)An employer must ensure* ***~~as far as reasonably practicable~~*** *that-* *(a) an inventory of HCAs used, handled or stored at the workplace is prepared and kept at the workplace; and.* <u>Proposal:</u> Include 'inventory' in the definitions list and use the definition provided.

		…… …… <u>Further comment on 9(1)(a):</u> The inventory should be stored separately from the HCA's at the workplaces. Proposed draft *(a) an inventory of HCAs used, handled or stored (INSERT **at a separate location**) at the workplace is prepared and kept at the workplace; and* and inventory Interface with act 36 – pesticides and the GHS
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
10	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Regulation 10 – Hazardous Chemical Agents risk assessments *(1) Where an HCA is present in the workplace the employer must cause a documented risk assessment of an HCA to be carried out.*	<u>Comment</u> <u>General comment</u> Regulations 10, 11, 13 and 14 interrelate in a manner which is complex and unclear. This will create regulatory uncertainty to the detriment of protecting worker health and safety from situations of serious risk through exposure to hazardous substances. The Constitution[5] requires reasonable measures to protect health and well-being and the regulations should therefore be redrafted to ensure clarity at all times. The following comments elucidate this point of criticism. Regulation 10(1) – Hazardous Chemical Agents risk assessments The trigger for a risk assessment, according to regulation 10(1) is "*where an HCA is present in the workplace.*"

[5] Constitution section 24:
Everyone has the right to (a) an environment that is not harmful to their health and well being and (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

		Proof that an HCA is present in the workplace before a risk assessment is done is too stringent a requirement to ensure workplace health and safety. It prejudices workers who might be exposed to hazardous substances, which is a serious regulatory concern. Draft regulation 10 replaces most of regulation 5(1) and (2) of the 2021 regulations, which adopted a proactive approach to risk assessment. These regulations required assessments "*to determine if any employee **may** be exposed by any route of intake*" (of HCA's). Hence if there was *potential exposure* to an HCA in the workplace, an assessment was required under the 2021 regulations, which also made provision for consultation on arrangements for risk assessments with health and safety representatives. The above two provisions have been removed without adequate justification. The protections afforded to employees under the provisions of the 2021 regulations relating to risk assessment have in the process been significantly weakened by the removal of the duty to assess where *potential* exposure exists. Draft regulation 10(1) adopts a reactive rather than a proactive approach to risk assessments. Actual exposure is now the requirement for such assessment. See: *10(1) Where an HCA <u>is present</u> in the workplace the employer must cause a documented risk assessment of an HCA to be carried out.* (emphasis added) The deficiencies in this approach as regards workplace health and safety are as follows: (ii)Consultation with health and safety representatives: Under the 2021 regulations for risk assessments, health and safety representatives or committees were required to be given a reasonable time to comment on arrangements for HCA assessment. This provision has been removed. Employees may have valuable insights about the risks they face at work and there is no reason to remove a provision which encourages the proper assessment of risks. <u>Proposal</u>

		*(1) Where an HCA is (INSERT: **likely to be**) present in the workplace the employer must cause a documented risk assessment of an HCA to be carried out.* <u>Alternative proposal</u> The 2021 formulation should be retained in place of 10 (1) ie *5. (1) An employer or self-employed person must, after consultation with the relevant health and safety representative or relevant health and safety committee,* *cause an assessment to be made immediately, and thereafter at intervals not exceeding two years, to determine if any employee may be exposed by any route of* *intake.* *(2) The employer must inform the relevant health and safety representative or relevant health and safety committee in writing of arrangements made for the assessment contemplated in sub regulation (1), give them reasonable time to comment thereon, and ensure that the results of the assessment are made available* *to the relevant representative or committee who may comment thereon.*
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		The proposal will possibly impact slightly on the contents of regulation 17 as 17(1)(a) and possibly 17(2) which deal with training and information and the duty to inform health and safety representatives of risk assessments. A provision could be added to regulation 17(1) (a) (i)) stating that they be given a reasonable *reasonable time to comment on any planned risk assessment.* <u>Proposed addition to regulation 17: (</u>17(1) (a) (i)) *17. Information, instruction and training* *(1) An employer who undertakes work which exposes an employee to an HCA, must inform and consult the relevant health and safety representatives or health and safety committee established for that workplace, of the- (a) intention to conduct- (i) a risk assessment contemplated in regulation 10; and (INSERT: **afford such representatives a reasonable opportunity to comment on any planned risk assessment.)*** The proposal might also widen the ambit of regulations 11(2), 13(1)(a) and 13(2)(a) to include potentially more HCA's ie those that the employee

		will be exposed to as well as those that they **may** be exposed to
	10(1)(e)	<u>Comment:</u> The 2021 regulations proactively required air monitoring if any HCA might be present in the workplace. Draft regulation 10 does not indicate **when** air sampling, monitoring or medical surveillance must take place - as part of the assessment of risk, but refers instead to regulations 13 and 14 respectively. But regulation 13 states that air monitoring must be based on the HCA risk assessment. This results in a circular and confusing regulation, and legal uncertainty, which is intolerable in legislation/regulation. This is even more unacceptable as regulations dealing with hazardous substances in the workplace must protect employees in very clear terms and with very clear obligations. Regulation 10 should create a clear duty to sample air HCA's where the risk of exposure **may exist** in the workplace and should set out clear requirements for such sampling and monitoring and when this must take place, especially since regulation 13(1)(c) requires exposure monitoring. Regulation 13 states: *13(1) "Based on the HCA risk assessment for an SEG carried out in accordance with regulation 10, the employer must ensure that exposure monitoring is conducted - (a) for air monitoring for an HCA with an OEL ML or RL, at least every 24 months: Provided an inspector may direct an employer to conduct or re-conduct the exposure monitoring or part thereof; (b) by an approved inspection authority; (c) if the risk assessment indicates potential exposure is evaluated to exceed 50% of the OEL; (d) by collecting a minimum of three personal air monitoring measurements for each SEG;* The only reference to timing of the air monitoring in the draft regulations is contained in 13(1) (a), i.e. at least every 24 months. This means that there could be a 24-month time lag between the risk assessment and air sampling and monitoring, as air sampling and the time limits for undertaking such sampling are not indicated as a definite requirement for the risk assessment. <u>Proposed regulation</u>

		10(1)(e)(xii) the level, frequency and duration of exposure as well as route of intake; ***if the risk assessment determines that an employee may be exposed to an HCA via inhalation, air sampling must be conducted forthwith by an approved inspection authority and in accordance with the requirements of regulation 13(1) (d).*** <u>Further comment:</u> The regulation should have a mechanism whereby the employee can inform the employer of potential exposure or changes in practices so that a risk assessment can immediately be undertaken or reviewed. The right of the health and safety committee to comment on the arrangements for the assessment has been removed – as contained in 2021 regulation 5(2). There seems no justification for this. Transparency, access to information are all part of environmental management and important information that is in possession of this committee might more easily come out if they know about arrangements for the assessment.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		Suggested changes relate to regulations 10(1)(e)(xii) may impact on the proper implementation of controls referred to in 13(1)(d), 13(2) (a) and (b) and will enable the employer to determine that it needs to do exposure monitoring as soon as the risk assessment is completed. The suggested changes will mean that the information on potential exposure will be generated by sampling forthwith during the risk assessment process, and this will enable the employer to develop controls as soon as possible as envisaged in terms of regulations 13(2) (a) and (b). Without this sampling the employer will not have the necessary guidance in developing controls.
	10(3) *(3) The employer must indicate appropriate controls in the HCA risk assessment, in terms of regulation 11, where there is a risk to health indicated by- (a) the risk assessment conducted in terms of sub*	<u>Comment:</u> <u>(i)Risk to health</u> HCA's are by definition a risk to health and therefore controls should be implemented where there is a risk of exposure to an HCA in the workplace, and not be dependent on the findings of a risk assessment. <u>Proposal</u>

	regulation (1); (b) the review conducted in terms of sub regulation (2); (c) the results of any exposure monitoring carried out in accordance with regulation 13; (d) medical surveillance carried out in accordance with regulation 14; (e) if after implementation of controls for the SEG, in terms of regulation 11, the review conducted in terms of sub regulation (2) indicates potential exposure is likely to exceed 50% of the OEL; (f) air monitoring alone is unlikely to reflect total uptake through all exposure pathways; or (g) where the BEI is likely to be exceeded, then in terms of regulation 13(1) exposure monitoring must be conducted.	The words "risk to health" should be changed to "risk of exposure through whatever pathway" *"(3) The employer must indicate appropriate controls in the HCA risk assessment, in terms of regulation 11, where there* ***is a risk of exposure through whatever pathway*** *indicated by- (a) the risk assessment conducted in terms of sub regulation(1); (b) the review conducted in terms of sub regulation (2….."* <u>(ii) Appropriate controls - Comment</u> Regulation 10(3) requires the employer to indicate appropriate controls in the risk assessment in terms of regulation 11. But regulation 11 refers back to the regulation 10 when it states *11(2) When determining whether exposure is reasonably controlled, the employer must apply control measures <u>consistent with the risk assessment of HCA</u>, or if applicable exposure monitoring of HCA carried out in terms regulation 13, in order of priority.* This is once again a circular regulation where it is not clear what the regulatory requirement to apply control measures actually is.
Will the proposal have an impact on any other regulation ? If so, which regulation and what will be the impact?	Regulation 11(2) and 13 Regulation 14(1) will be impacted by the recommended change to 10(3) recommended (ie changing of the words "risk to health" to "risk of exposure through whatever pathway") As a consequence the wording of regulation 14 (1) and 14(2) should be changed to delete the word "significant". HCA's are by definition significantly harmful to health and an employee will be prejudiced if it is required to prove significant harm to health before controls such as medical surveillance are	<u>Comment:</u> Regulation 14(1) will be impacted by the recommended change to 10(3) recommended (ie changing of the words "risk to health" to "risk of exposure through whatever pathway") As a consequence the wording of regulation 14 (1) and 14(2) should be changed to delete the word "significant". HCA's are by definition significantly harmful to health and an employee will be prejudiced if it is required to prove significant harm to health before controls such as medical surveillance are required. This is an additional requirement that was not present in the 2021 regulations and is not justifiable.

	required. This is an additional requirement that was not present in the 2021 regulations and is not justifiable. Recommended changes in the text are indicated by strikethrough: *14. Medical screening and surveillance (1) Where the HCA risk assessment, including consideration of all routes of intake, or the exposure monitoring for HCA, comparative to an OEL or BEI as the case may be, identifies a ~~significant~~ exposure risk for an employee carrying out work using, handling, generating of storing HCA, the employer must obtain the opinion of an occupational medicine practitioner to determine whether it is necessary to conduct medical screening of employees. (2) Where ~~significant~~ exposure risk is identified in terms of subregulation (1), the occupational medicine practitioner must consider if- (a) there is ~~significant~~ risk to an employee's health;*	
11	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	11. Prevention or Control of Exposure to HCA *11(1) (b) for an HCA with a maximum limit, exposure is reasonably controlled, and- (i) the OEL for the SEG*	<u>Comment:</u> Draft regulation 11(1)(b) replaces and weakens regulation 10(1)(b) of the 2021 regulations. The 2021 regulation 10 states:

	is not exceeded; or (ii) if practicable elimination or substitution have been implemented in line with sub regulations (2)(a) and (2)(b) respectively and; (iii) engineering controls have been implemented in line with subregulation (2)(c), but have not reduced exposure to below the OEL, where additionally the employer may use administrative controls specified in subregulation (2)(d) or personal protective equipment controls as provided for in regulation 15.	*10. (1) An employer must ensure that the exposure of an employee is either prevented or, where this is not reasonably practicable, adequately controlled:* *Provided that—* *(b) where there is exposure for which there is a maximum limit, the control of the exposure must be regarded as adequate if the exposure is at a level as low as is reasonably practicable below that maximum limit……(emphasis added)* The draft regulation 11(1)(b) has removed the requirement underlined above that exposure be kept *at a level* ***as low as is reasonably practicable*** *below that maximum limit….* The draft regulations are therefore far laxer than the 2021 regulations. They give the employer a choice of one of two options. (11(1)(b)(i) or (ii)) In both cases the level of exposure control to be achieved is "*below the OEL."* This is a far weaker standard than the 2021 regulations of *as low as is reasonably practicable below that maximum limit.* There is no justification for relaxing the standard to mere compliance with the OEL level. The 2021 regulations standard for control of exposure should be retained. This approach is consistent with NEMA, which is framework legislation and applies to all other legislation, and which has as a basic principle that significant environmental impacts should be minimized, as opposed to permitting it up to a threshold.[6] One of the reasons for minimization of emissions is the cumulative and synergistic impacts of air pollution which may lead to unacceptable levels of hazard, for example if there are other pollutants present e.g. dust in the workplace where the HCA is present. It is important that the duty to minimize is made absolutely clear throughout the regulations. Minimisation of exposure to highly hazardous chemicals and HCA's is a constitutional duty and policy in South Africa. In some cases one exposure to an HCA may have carcinogenic, mutagenic or endocrine disrupting consequences, hence the duty to minimize exposures, and therefore minimization becomes critical in protecting workers. In some cases there is no safe threshold for particular HCA's.

[6] NEMA principle

		Minimization, substitution and the precautionary approach to regulating HCA's are accepted policies of the WHO and in most developed countries. It is also accepted as policy in SA as a result of the alignment to the ILO convention on chemical International standards. For example section 13 of the ILO convention on chemical safety[7] to which South Africa is a signatory requires competent authorities to establish criteria for safety in the use hazardous chemicals, including provisions covering, as applicable: *(d) the precautionary measures to be taken through: (i) the choice of chemicals that eliminate or minimise such risks; (ii) the choice of processes, technology and installations that eliminate or minimise such risks;* <u>Proposal</u> 11(b)(i) should be drafted as follows *(b) for an HCA with a maximum limit, exposure is reasonably controlled to a level as* ***low as reasonably practicable*** *below that maximum limit, and- (i) the OEL for the SEG is not exceeded;*
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
11	11(1) (b)(iii) *iii) engineering controls have been implemented in line with sub regulation (2)(c), but have not reduced exposure to below the OEL, where additionally the employer may use administrative controls specified in sub regulation (2)(d) or personal protective equipment controls as*	Comment 11(1) (b)(iii) is worded in an ambiguous and grammatically incorrect manner and may therefore lead to problems with interpretation and consistent implementation. See *(iii) engineering controls have been implemented in line with sub regulation (2)(c), but have not reduced exposure to below the OEL, where additionally the employer may use administrative controls specified in sub regulation (2)(d) or personal protective equipment controls as provided for in regulation 15.*

[7] International Labour Organisation section 13 ILO Chemicals Convention no 170 and its recommendation 177 see : https://webapps.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_731982.pdf

	provided for in regulation 15.	This above formulation does not make grammatical sense and does not clearly indicate that the employer may use administrative controls and PPE as a last resort where other methods have failed to reduce the exposure to below the OEL. A solution would be as follows: The words *"where additionally the employer may use.."* Should be changed to *"then the employer may, in addition, use…"* <u>Proposed wording</u> *11(b) (iii) engineering controls have been implemented in line with sub regulation (2)(c), but have not reduced exposure to below the OEL,* ***then the employer may in addition*** *use administrative controls specified in sub regulation (2)(d) or personal protective equipment controls as provided for in regulation 15*.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact? <u>Possibly the respirator zone</u>		
	11(2)	<u>Comment:</u> Regulation 11(2) is ambiguous and therefore difficult to understand or apply consistently The words "or if applicable" would make sense if the "or if" was changed to "and if" – otherwise the reasonable interpretation of this regulation is that the employer only has to apply control measures where there is no applicable exposure monitoring of HCA required in terms of regulation 13. Secondly It is not clear what the words *"in order of priority"* apply to. It is suggested that these words be replaced by the words *"Such control measures shall apply in the following order of priority."* <u>Proposal</u> The provision 11(2) would then read as follows: *(2) When determining whether exposure is reasonably controlled, the employer must apply control measures consistent with the risk assessment of HCA****, and if*** *applicable, exposure monitoring of HCA carried out in terms of regulation 13.* ***"Such***

		control measures shall apply in the following order of priority."
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
	11(3)	Comment: 11(3)(e) ii 11 (3) (e). The duty to minimise emissions is not set out as a general regulatory imperative in these regulations, notwithstanding the fact that it is a regulatory requirement under the NEMA principles and the and the constitution as well as several environmental policies. This can be achieved through best practice and the use of best available technologies within the constitutional limit of justifiable economic development. The duty to minimise is set out as follows in the principles under the National Environmental Management Act. Also no time line is given for implementing controls over emissions, and the earliest monitoring is 24 months after the risk assessment in terms of regulation 13. This could be interpreted to allow a situation of no control over HCA emissions to exist for two years after a risk assessment has been completed which itself has no timelines for completion, except for the word "immediately". This creates a regulatory loophole where controls are potentially not implemented, to the detriment of employee health and safety. Proposed regulation 11 (3) (e). *(d) emissions are controlled and minimised within 6 months of the completion of the risk assessment in terms of regulation 10 using best practice and best available technology in line with the duties set out in the NEMA principle of requiring the best practicable environmental option, and principles of prevention and minimisation set out in principle 4.*
Will the proposal have an impact on any other regulation? If so, which regulation and what will be		

the impact?		
12	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus
12	*Regulation 12 – Use, maintenance, examination and testing of control measures* *12. Use, maintenance, examination and testing of control measures (1) Every employer or self-employed person who provides any control measure as contemplated in regulation 11, must ensure that- (a) reasonable steps are taken to enforce the proper use and application; (b) where relevant, is maintained in effective working order; (c) it is maintained in a clean condition; and (d) inspection, examination and testing of controls, is carried out at appropriate intervals. (2) Where ventilation controls as a form of engineering control, are provided to meet the requirements of regulation 11, the employer must ensure that- (a) ventilation controls are operated and maintained, to reasonably control exposure to OEL-RL and OEL-ML agents, subject to regulation 11(1); (b) written instructions are established, which specify the nature and frequency of inspections, tests and maintenance to be*	<u>Comment:</u> 2021 regulations required control measures that have been changed by the introduction of vague terms such as "*reasonable steps*" (regulation 12(1)(a); "*where relevant"* (regulation 12(1)(b); and "at *appropriate intervals*" 12(1)(c) without justification. These terms are vague and will create challenges to enforcement and make it difficult for employees to ensure that controls such as PPE are kept in good working order at all times. For example, will face masks be checked and kept working properly at all times? <u>Specific comments</u> *12(1) Every employer or self-employed person who provides any control measure as contemplated in regulation 11, must ensure that- (a) reasonable steps are taken to enforce the proper use and application.* This formulation is impossible to enforce as *"reasonable steps"* are not defined, creating a potential danger for employees exposed to HCA's. <u>Proposal.</u> *"12(1) Every employer or self-employed person who provides any control measure as contemplated in regulation 11, must ensure that- (a) the proper use and application* ***thereof is enforced;****"*

	performed on the ventilation system; and (c) testing of the ventilation system is carried out at least once every 24 months by an approved inspection authority, who must record in writing whether performance of the ventilation plant conforms to an appropriate standard or guideline.	
have an impact on any other regulation? If so, which regulation and what will be		
12	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	12(1)(b) *(b) where relevant, is maintained in effective working order;*	<u>Comment:</u> 12(1)(b): The draft regulations require that control measures must be maintained in effective order only *"where relevant."* No guidance is provided in the regulations to indicate how relevance is determined. It is difficult to envisage a control measure that does not need to be kept in effective working order at all times, as was required in the 2021 regulations.[8] The words *"where relevant"* have introduced vagueness in the regulation making it unenforceable and should be deleted. They also suggest that not all controls need to be kept in good working order depending on what the employer regards as relevant. This introduces employer discretion, vagueness and uncertainty in the regulations to the detriment of employee safety, and there is no justification for this change in the regulatory scheme. *Proposal* *12(1) "(b) such measures are maintained in effective working order;"*
	12(1)(d)	<u>Comment:</u> *12(1)(d*

[8] 2021 regulation 12 (a) : *"An employer must ensure that all control equipment and facilities provided in terms of regulations 10 and 11 are maintained in good working order."*

	(d) inspection, examination and testing of controls, is carried out at appropriate intervals.	This provision is unenforceable since it is not specified who must do the inspection and how an *"appropriate interval"* is defined. On a practical level it will be difficult for employee representatives to hold management to account to do these inspections and testing of these control measures without specified time periods, to the detriment of employee health and safety. <u>Proposal:</u> Regulation in 12 (1)(d) should be redrafted to create an enforceable standard for checking that administrative controls and PPE are being adhered to. Suggested draft regulation: "*12 (1)(d)* inspection, examination and testing of controls, is carried out at intervals *not exceeding 24 months by the employer in conjunction with a health and safety representative or committee.*
	12(2): *(2) Where ventilation controls as a form of engineering control, are provided to meet the requirements of regulation 11, the employer must ensure that- (a) ventilation controls are operated and maintained, to reasonably control exposure to OEL-RL and OEL-ML agents, subject to regulation 11(1); (b) written instructions are established, which specify the nature and frequency of inspections, tests and maintenance to be performed on the ventilation system; and (c) testing of the ventilation system is carried out at least once every 24 months*	<u>Comment:</u> 12 (2): the regulation requires engineering controls in respect of ventilation only, to be tested at least once every 24 months by an approved inspection authority. This has reduced the requirements for the 2021 regulations which required "*thorough examinations and tests of engineering control measures ... .at intervals not exceeding 24 months by an approved inspection authority.*[9] It is not clear why only engineering controls for ventilation require inspection by an approved inspection authority. Other engineering controls to prevent exposure to HCA's might be equally important. This reduces the potential protection of worker health and is unacceptable and should not be implemented. <u>Proposal:</u> The regulation in 12(b) of the 2021 regulation should be retained as it is protective of health and safety of employees who might be exposed to HCA's and therefore fulfils the requirement of a reasonable

[9] id

	by an approved inspection authority, who must record in writing whether performance of the ventilation plant conforms to an appropriate standard or guideline.	measure for the protection of health and well being contained in section 24 of the Constitution.
13	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	13(1)(a) and (c) *13. Exposure monitoring of HCA* *(1) Based on the HCA risk assessment for an SEG carried out in accordance with regulation 10, the employer must ensure that exposure monitoring is conducted - (a) for air monitoring for an HCA with an OEL ML or RL, at least every 24 months: Provided an inspector may direct an employer to conduct or re-conduct the exposure monitoring or part thereof;…(b)…* *(c) if the risk assessment indicates potential exposure is evaluated to exceed 50% of the OEL;*	<u>Comment:</u> 13(1) says that the employer only needs to do air monitoring every 24 months and only if risk assessment indicates exposure evaluated to exceed 50% of the OEL, and by collecting a minimum of three personal air monitoring measurements for each SEG. In practice this means that air monitoring (by collecting of samples) can be delayed by two years after the risk assessment, even if the risk assessment has found high levels of HCA in the workplace. As stated above in comments on draft regulation 10, the regulations should EXPLICITLY require initial air sampling as part of the risk assessment, if there is likely to be presence of HCA's in the workplace.[10] After the risk assessment has been completed, the controls as envisaged by regulation 11(2) should be implemented within a specified time – and we have proposed the implementation time in comments on regulation 11(3)(e) as 6 months.[11] This is in order to protect employees by forcing controls on HCA emissions into the workplace as soon as possible after the risk assessment has been completed

[10] The proposed regulation in this regard is repeated for ease of reference:
<u>Proposed regulation</u> *10(1)(e)*
(xii) the level, frequency and duration of exposure as well as route of intake; ***if the risk assessment determines that an employee may be exposed to an HCA via inhalation, air sampling must be conducted forthwith by an approved inspection authority and in accordance with the requirements of regulation 13(1) (d).***

[11] The proposed regulation in this regard is repeated for ease of reference:
<u>Proposed regulation</u>
11 (3) (e).
(d) emissions are controlled and minimised within 6 months of the completion of the risk assessment in terms of regulation 10 using best practice and best available technology in line with the duties set out in NEMA, and principles of prevention and minimisation set out in principle 4

		Successful implementation of controls should then be tested as soon as possible after they have been implemented - and we suggest within a month - to determine whether the controls are effective. Thereafter air monitoring should take place at most every 24 months. Proposed reg 13(1) *"13. Exposure monitoring of HCA* *(1) Based on the HCA risk assessment for an SEG carried out in accordance with regulation 10, the employer must ensure that exposure monitoring is conducted - (a) for air monitoring for an HCA with an OEL ML or RL,* ***within one month of the implementation of controls envisaged in regulation 11(2) and thereafter at least every 12 months:*** *Provided an inspector may direct an employer to conduct or re-conduct the exposure monitoring or part thereof….;"*
	13 (2) *(2) The results of air monitoring carried out in terms of sub regulation (1) must be used to determine- (a) the need for controls, in terms of regulation 11; (b) whether to conduct medical screening and surveillance, in terms of regulation 14; and (c) validation of respirator protection factor selection, in terms of regulation 15.*	Controls (2) The results of air monitoring carried out in terms of subregulation (1) must be used to determine- (a) the need for controls, in addition to those set out in in terms of regulation 11; Regulation 11 has a hierarch of controls. The implementation thereof should not depend on air monitoring as this might be delayed. There is ambiguity int the regulation as it appears that controls are dependent on monitoring. There should be a general regulatory duty to implement controls where a HCA may impact workers, to be refined by monitoring Controls 13(2) says that air monitoring must be used to determine the need for controls in terms of regulation 11. This regulation does not align with regulation 11(2), which requires a hierarchy of controls on HCA emissions, informed by air monitoring, **if applicable.** In practice monitoring of exposure through inhalation should be determined by initial air sampling as part of the risk assessment. In this regard we have suggested that air sampling is explicitly included in the requirements for risk

		assessment under regulation 10.[12] This air sampling can be used to determine controls and after implementation thereof further sampling should be done to ensure that the controls are effective as suggested above. Without initial sampling there is no guidance on what controls to implement and the first air monitoring can be delayed for up to 24 months (as specified in regulation 13(1)(a). This leaves employees potentially unprotected for up to two years after the risk of exposure to an HCA has been detected in the risk assessment under regulation 10. This is unacceptable, in terms of the Constitutional duty to provide reasonable measures to protect health. <u>Proposal</u> 13 (2) *"The results of air monitoring carried out in terms of* ***regulation 10 and thereafter*** *under regulation 13 sub regulation (1) must be used to determine- (a) the need for controls, in terms of regulation 11;"*
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
		13 Question for Unpoison – is the threshold of 50 % of the OEL too permissive? In the USA monitoring is required at lower levels. I will have to check these and regulatory provisions in Europe and other jurisdictions (i) 13(1)(e)(iii) requires biological exposure monitoring for a limited group of chemicals if it is BEI listed in table 4 of Annexure 2, if recommended by an occupational medicine practitioner, but this does not apply to medical surveillance unless the further

[12] Proposed regulation is indicated for ease of reference :
<u>Proposed regulation</u>
10(1)(e)
(xii) the level, frequency and duration of exposure as well as route of intake; ***if the risk assessment determines that an employee may be exposed to an HCA via inhalation, air sampling must be conducted forthwith by an approved inspection authority and in accordance with the requirements of regulation 13(1) (d).***

		requirements of regulation 14 are met – set out above. This seems an unreasonable departure from the protections afforded by the 2021 regulation 7(1)(a). This creates an unreasonably high threshold, before medical assessment is required, especially considering that these are hazardous substances.
	13(2)	13(2) Comment This regulation unreasonably curtails the determination of the need for controls on emission of HCA's into the workplace, to the air monitoring program, ignoring the overall regulatory duty to minimise emissions into the workplace in terms of NEMA Principle 4. The result is that if the air monitoring program is deficient or delayed control methods will also be deficient or delayed and employee health and safety will be at risk. *13 (2) states: The results of air monitoring carried out in terms of sub regulation (1) must be used to determine- (a) the need for controls, in terms of regulation 11; (b) whether to conduct medical screening and surveillance, in terms of regulation 14; and (c) validation of respirator protection factor selection, in terms of regulation 15.* Proposal *13(2)* ***in addition to the general duty to minimise emissions set out in regulation 11(3)(e),*** *the results of air monitoring carried out in terms of subregulation (1) must be used, to determine- (a) the need for controls, in terms of regulation 11; (b) whether to conduct medical screening and surveillance, in terms of regulation 14; and (c) validation of respirator protection factor selection, in terms of regulation 15.*
13(2) *(2) The results of air monitoring carried out in terms of sub regulation (1) must be used to determine- (a) the need for controls, in terms of regulation 11;*		(2) The results of air monitoring carried out in terms of sub regulation (1) must be used to determine- (a) the need for controls, in addition to those set out in terms of regulation 11;

		Regulation 11 has a hierarchy of controls. The implementation thereof should not depend on air monitoring as this might be delayed. There is ambiguity in the regulation as it appears that controls are dependent on monitoring. There should be a general regulatory duty to implement controls where a HCA may impact workers, to be refined by monitoring.
14	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
14(1)	*14. Medical screening and surveillance* *(1) Where the HCA risk assessment, including consideration of all routes of intake, or the exposure monitoring for HCA, comparative to an OEL or BEI as the case may be, identifies a significant exposure risk for an employee carrying out work using, handling, generating of storing HCA, the employer must obtain the opinion of an occupational medicine practitioner to determine whether it is necessary to conduct medical screening of employees.*	Comment: 14(1) Medical screening and surveillance. The 2021 regulations set very clear, certain or easily ascertainable requirements for medical screening of employees exposed to HCA's. (see 2021 regulation 7(1)(a)(b) and (c)). They were straightforward to implement and kept the correct balance between the roles of employer, employees and occupational health practitioners in order to secure a safe working environment. There is no reason to change these regulations and they should be retained. The draft regulations have now set an unacceptably high threshold for medical screening. The result is that medical screening will become unacceptably cumbersome, expensive and unlikely to be implemented to the detriment of employee health and safety. **Three** requirements now have to be met before screening will take place. This is unacceptable since medical screening is aimed at protecting individuals "at sufficient risk of a specific disorder because of exposures in the workplace".[13] This would include for example women, who are more at risk than men are of developing diseases, such as those related to reproduction and the developing foetus, as a result of exposure to hazardous pesticides. The regulations take away existing rights and reasonable mechanisms for the protection of health guaranteed under the constitution with no justification provided. The 2021 regulations, by comparison, required medical screening if **one** of three criteria were met, and these criteria were sufficiently flexible and easy to implement to protect employees from HCA exposure at work. These regulations also contained

[13] Draft regulations - definitions

		guidelines that stress the importance of medical surveillance, and provide a far more employee-centred approach, with lower thresholds for instituting a medical surveillance program. Very importantly the 2021 regulations provided for intervention by an *occupational health practitioner* who is presumably an independent professional. The employer was not required to invite the practitioner, and this provided additional protection for employees, especially if the other two requirements[14] were not met. Employees could call on an occupational health practitioner if they were concerned about exposure at work and the employer would not be permitted to require an employee to work in a workplace where they would be exposed if the occupational health practitioner had certified the employee unfit to work.[15] The removal of the provision that a medical surveillance program must be implemented if recommended by an occupational health practitioner is unacceptable. It is not explained or justified and removes an independent and scientific basis for conducting such assessments. It also reduces the bargaining power of employees to demand such surveillance if an occupational health practitioner has recommended it. The draft regulations in 14(1) now require an (i) HCA risk assessment (including consideration of all routes of intake); or HCA exposure monitoring; and (ii) Determination of a significant exposure; and (iii) Thereafter the employer must obtain the opinion of an occupational medical practitioner to determine whether it is necessary to conduct medical screening. This provision will severely undermine the protection of employee health and safety as it is entirely dependent on the employer conducting all three steps (i.e. the immediate and subsequent HCA risk assessments, determining if exposure is significant and thereafter obtaining the opinion of the occupational medical practitioner.) If one of these steps is not taken or is delayed for any reason the employees will not be able to demand medical

[14] 2021 regulations 7(1)(a) and (b)
[15] 2021 regulation 7(3)

		surveillance or enlist the help of an occupational medical practitioner to recommend medical screening. Secondly the term "significant" exposure is not defined and results in the regulation being vague and unenforceable. The employer may contest that the exposure is significant and there will be no way for employees to challenge this, as they could do under the 2021 regulations, by calling in an occupational health practitioner under regulation 7(1)(c). If the term "significant" exposure is to be used it should be defined in terms of easily ascertainable and verifiable criteria such as are found in 2021 regulation 7(1) (b) : *"(b) the exposure of the employee to any chemical agent hazardous to his or her health is such that an identifiable disease or adverse effect to his or her health may be related to the exposure, there is a reasonable likelihood that the disease or effect may occur under the particular conditions of his or her work, and there are techniques to diagnose indications of the disease or the effect as far as is reasonably practicable; …."* The draft regulations require an HCA risk assessment and determination of whether exposure is significant before an occupational medical practitioner can be called upon by the employer to determine that it is necessary to conduct medical screening. In the 2021 regulations the occupational medical practitioner had an independent right to call for medical surveillance and the employer was required to do this surveillance if it was recommended by such practitioner;[16] Under the draft regulations the *occupational health practitioner* must give an opinion whether it is necessary to conduct medical screening and must design and monitor the system of medical screening if it is required. Under the 2021 regulations occupational health practitioners had a general discretion to recommend, without having to consider a long list of issues as is the requirement of the draft regulation 14(2), and this recommendation had to be followed by the employer. The draft regulations have removed this layer of protection to cases of "*significant* exposure risk" and replaced it with a

[16] 2021 regulation 7(1)(c)

		provision that the occupational health practitioner only comes into the picture if two other requirements are met and by invitation of the employer and after significant exposure has been established. The formulation of these three requirements removes the practicality and flexibility of the 2021 regulations creating an onerous and complex system which will be costly to implement given that the *occupational health practitioner* must give an opinion whether it is necessary to conduct medical screening and must design and monitor the system of medical screening. The guidelines for the 2021 regulations are important for understanding the formulation of regulation 7 of the 2021 regulations and should be carefully considered before any changes are made: See 2021 Regulation Guidelines as follows: *10. Work-related adverse health findings, identified by medical surveillance, not only affect the individual employees management in the workplace but may also have important implications regarding the effectiveness of exposure control measures in the workplace and warrant further steps by the employer.* *11. Medical surveillance must be provided if an employee is using, handling, generating or storing an HCA that is known to cause adverse health effects, (emphasis added)* *and—* *(a) the level of exposure is such that an occupational disease or adverse effect may reasonably be expected to occur, and* *(b) valid medical testing techniques are available to detect the adverse effect on the employees health.* *12. This means the employer must ensure that a health risk assessment is conducted to determine the likelihood of exposure to an HCA, in conjunction with the known health effects of the HCA, which the occupational medicine practitioner can use to decide if a programme of medical surveillance is* *necessary. Test selection should consider relevant target organs and test performance as referred to in paragraph 14(b).* *13. Additionally, medical surveillance should be provided if, in the opinion of an occupational medicine practitioner, it is necessary, notwithstanding the above criteria are not met.….*

		In effect paragraph 12 of the guidelines sets out the reasonable and flexible approach of the 2021 regulation 7. What the draft regulations do is remove that flexibility and create three onerous requirements, vague terms like "significant" impact, and remove the independence of the occupational health practitioner. The result is likely to be that there is very little effective medical surveillance in the future. Consider the following scenario. A pesticide company has had a big fire and there are chemicals that were previously packaged and have now spilt into the environment at the warehouse and on the land outside it. The employees are concerned about exposure. Under the draft regulation 10(2) the employer must review the risk assessment even though the hazardous properties of the chemical are well known. The assessment then does not consider the exposure risk to be significant hence no opinion is sought as to whether it is necessary to conduct medical screening. Workers are required to continue cleaning up the spill even though they are not being medically monitored. They cannot approach an occupational health advisor to recommend medical surveillance as they could under the 2021 regulations. <u>Proposal</u> The formulation for medical surveillance under regulation 7 of the 2021 regulations should be retained.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
	14(2) (*2) Where significant exposure risk is identified in terms of sub regulation (1), the occupational medicine practitioner must consider if- (a) there is significant risk to an employee's health; (b) an employee has a health condition that makes the*	<u>Comment:</u> 14(2) The draft regulations have 5 mandatory issues that the *occupational health practitioner* must consider. The word *"must"* should be replaced by *"may"* or *"should"* - as *"must consider"* it puts an unreasonably high burden on the heath practitioner before they can recommend a program of medical surveillance, and will result in increased costs, delays and interference with the professional discretion of the occupational health practitioner.

	employee vulnerable to an HCA, or which impacts the proper use of personal protective equipment; (c) there is an identifiable occupational disease or adverse effect related to the HCA; (d) there is a reasonable likelihood that the disease or effect may occur under the particular exposure conditions of their work; and (e) there are valid techniques to diagnose indications of the disease or the effect, as far as is reasonably practicable	
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
	14(3) *14(3)* *Where the need for medical surveillance has been determined as necessary by the occupational medicine practitioner, as contemplated in sub regulation (2), the occupational medicine practitioner must specify requirements for medical screening including-* *(4) an evaluation of the employee's medical, occupational and exposure history; (a) the appropriate clinical examination and medical tests; (b) the intervals at which medical screening must be conducted, appropriate to*	<u>Proposal</u> Regulation 14(3) should read as follows: *(3) Where the need for medical surveillance has been determined as necessary by the occupational medicine practitioner, as contemplated in sub regulation (2), the occupational medicine practitioner must specify requirements for medical screening including- **(a)** an evaluation of the employee's medical, occupational and exposure history; **(b)** the appropriate clinical examination and medical tests; **(c)** the intervals at which medical screening must be conducted, appropriate to the health risks and health status of the employee.*

	the health risks and health status of the employee	
	14(4) The employer must ensure that medical screening contemplated in subregulation (3) is carried out by an occupational health practitioner- (a) immediately before or within 14 days after a person commences employment as is practicable; and (b) subsequently, at intervals recommended by the occupational medicine practitioner, but not exceeding 24 months.	<u>Comment</u> 14(2)(b) appears to apply to existing employees and specific health conditions in individual employees is a relevant factor and mandatory consideration under 14(2)(d) 14(4) (a) Deals with new employees. It is not clear whether all new employees have to be screened for existing diseases and susceptibility within 14 days of commencing work. This should be clarified. For example if a screening is done and there are no sensitive employees then there might not be any program of screening. A new employee with a problem condition will not be screened and could be adversely affected by the HCA
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
15	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
16	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	16(1)	Comment: Does the employee have a complaint mechanism to cause a review of the risk assessment if he/she suspects that the limits might be exceeded and that a respirator zone is necessary? The requirement of 10(1)(a) that PPE only after the level has been reduced to as low as reasonably possible.

		Seems more like a free for all because can't achieve compliance The regulation should have a mechanism whereby the employee can inform the employer of potential exposure or changes in practices so that a risk assessment can immediately be undertaken or reviewed. The right of the health and safety committee to comment on the arrangements for the assessment has been removed – as contained in 2021 regulation 5(2). There seems no justification for this. Transparency, access to information are all part of environmental management and important information that is in possession of this committee might more easily come out if they know about arrangements for the assessment.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
17	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	17 Information, instruction and training *17. Information, instruction and training (1) An employer who undertakes work which exposes an employee to an HCA, must inform and consult the relevant health and safety representatives or health and safety committee established for that workplace, of the- (a) intention to conduct- (i) a risk assessment contemplated in regulation 10;*	<u>Comment:</u> As discussed in the comments under regulation 10(1) above in regard to consultation with health and safety representatives: Under the 2021 regulations for risk assessments, health and safety representatives or committees were required to be given a reasonable time to comment on arrangements for HCA assessment. This provision has been removed. Employees may have valuable insights about the risks they face at work and there is no reason to remove a provision which encourages the proper assessment of risks. <u>Proposed addition to regulation 17: (</u>17(1) (a) (i)) *17. Information, instruction and training* *(1) An employer who undertakes work which exposes an employee to an HCA, must inform and consult the relevant health and safety representatives or health*

	…… …….. *Regulation 17* *17(2) The information, instruction and training contemplated in subregulation (1)(c), must include-*	*and safety committee established for that workplace, of the- (a) intention to conduct- (i) a risk assessment contemplated in regulation 10; and (INSERT:* ***afford such representatives a reasonable opportunity to comment on any planned risk assessment.)*** …….. Comment on regulation 17(2): employees should be advised of the location of respirator zones Proposal *Regulation 17* *17(2) The information, instruction and training contemplated in subregulation (1)(c), must include-* *……* *(INSERT)* ***17(2)(j) location of respirator zones.***
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		
18	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Annexure 1 Table 2: GHS HAZARD CLASSES- HEALTH HAZARDS	The acute toxicity is incorrect as there are 5 categories not 3 as indicated in the draft regulations, as follows:, 1. oral, 2. dermal, 3. gases, 4.vapours and 5. dusts and mists, and there are 5 categories not 4 as indicated in the draft regulations. Source: United Nations, 2023. Globally Harmonised System of Classification & Labelling of Chemicals, 10th Edition. Proposal: Include all the Acute toxicity categories.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
19	Regulation and/ or Sub	Comment/Input/Correction/Proposal

	regulation from draft referring to	Plus Motivation
	Annexure 2 Table 1 Prohibited Hazardous Chemicals	These should be aligned to the multilateral environmental agreements(MEA's) such as Annexure A of the Stockholm Convention as some of the chemicals listed here are also listed on the Annexure A of the Stockholm Convention and must be aligned. An example would be PCB as it is listed under Annexure A of the Stockholm Convention Https:www.pic.int Proposal: Align to the MEA's as South Africa are signatories.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
20	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Annexure 2 Table 2 Occupational Exposure Limits	The RCHA - OEL does not align to the international indices as the RCHa-OEL refers to the operator exposure level - the international index is the AOEL - acceptable operator exposure level with the measurements of mg/kg bw/day and the threshold level is the ARfd - acute reference dose - not the STEL/ C as indicated here Proposal: Align to the indicated used in the GHS classification and by FAO/WHO
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
21	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Annexure 2 Table 3: OEL - restricted limits	The OEL - eight-hour TWA is the ADI - acceptable daily intake - ADI in the GHS and internationally accepted indices. The NOTATIONS also do not include all the GHS classifications, for example, Benomyl is also genotoxic, an EDC and a Reproductive and Developmental Toxicant under GHS.

		Proposal: Include all GHS classifications
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
22	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Annexure 2 Table 4: BEI's for HCA's	Acetylcholinesterase inhibitors: cholinesterase inhibiting pesticides. This is insufficient, a list should be included Proposal: Include list of cholinesterase inhibiting pesticides for clarity
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No
23	Regulation and/ or Sub regulation from draft referring to	Comment/Input/Correction/Proposal Plus Motivation
	Annexure 2: Tables 2,3,4 General comment	The STEL/C does not align to international exposure indices as FAO/WHO and GHS refers to the STEL/C indicated here as acute reference dose (ARfD). These indicators for almost all HCA can be found on PubChem, ECHA and Pesticide Properties Database (PPDB) for pesticides, as well as Chemsafetypro. Proposal: Alignment to the internationally recognised exposure indices.
Will the proposal have an impact on any other regulation? If so, which regulation and what will be the impact?		No

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Our comment is supported by the entities listed below:

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