

November 2024

COMPLIANCE CERTIFIERS

Obligations when issuing certificates and refusals

This guidance provides advice to authorised compliance certifiers on how to use discretion when deciding whether to issue compliance certificates. It also offers advice about when to consider conditional location compliance certificates, and when to notify WorkSafe New Zealand and businesses and organisations if a compliance certificate is refused.

Who this guide is for

This guidance is for authorised compliance certifiers.

Note: Where the word ‘you’ is used in this guidance it is referring to you as a compliance certifier.

Issuing compliance certificates

You have the authority to issue compliance certificates (‘certificates’) under the [Health and Safety at Work \(Hazardous Substances\) Regulations 2017](#) (‘the regulations’). WorkSafe authorises you to issue certificates in specific areas. You can only issue certificates in these specific areas, and you need to work within the limitations or restrictions of your authorisation.

Before you can issue a certificate, you need to check the relevant requirements in the regulations. You must conduct an inquiry, inspection, assessment, examination or other verification. You may use a third party to do this.

You can issue a certificate in three situations, when:

1. all the relevant requirements in the regulations are met¹
2. one or more of the requirements are not met, but you are satisfied any potential adverse effect has been satisfactorily avoided²
3. there is a hazardous substance location, one or more of the requirements are not met, and those non-compliances are minor. This is a conditional location compliance certificate (‘a conditional certificate’).³

Figure 1 explains the framework for issuing certificates, and for notifying WorkSafe about the refusal to issue certificates.

¹ You can do this under regulation 6.23(1).

² You can do this under regulation 6.23(3)(a).

³ You can do this under regulation 6.24.

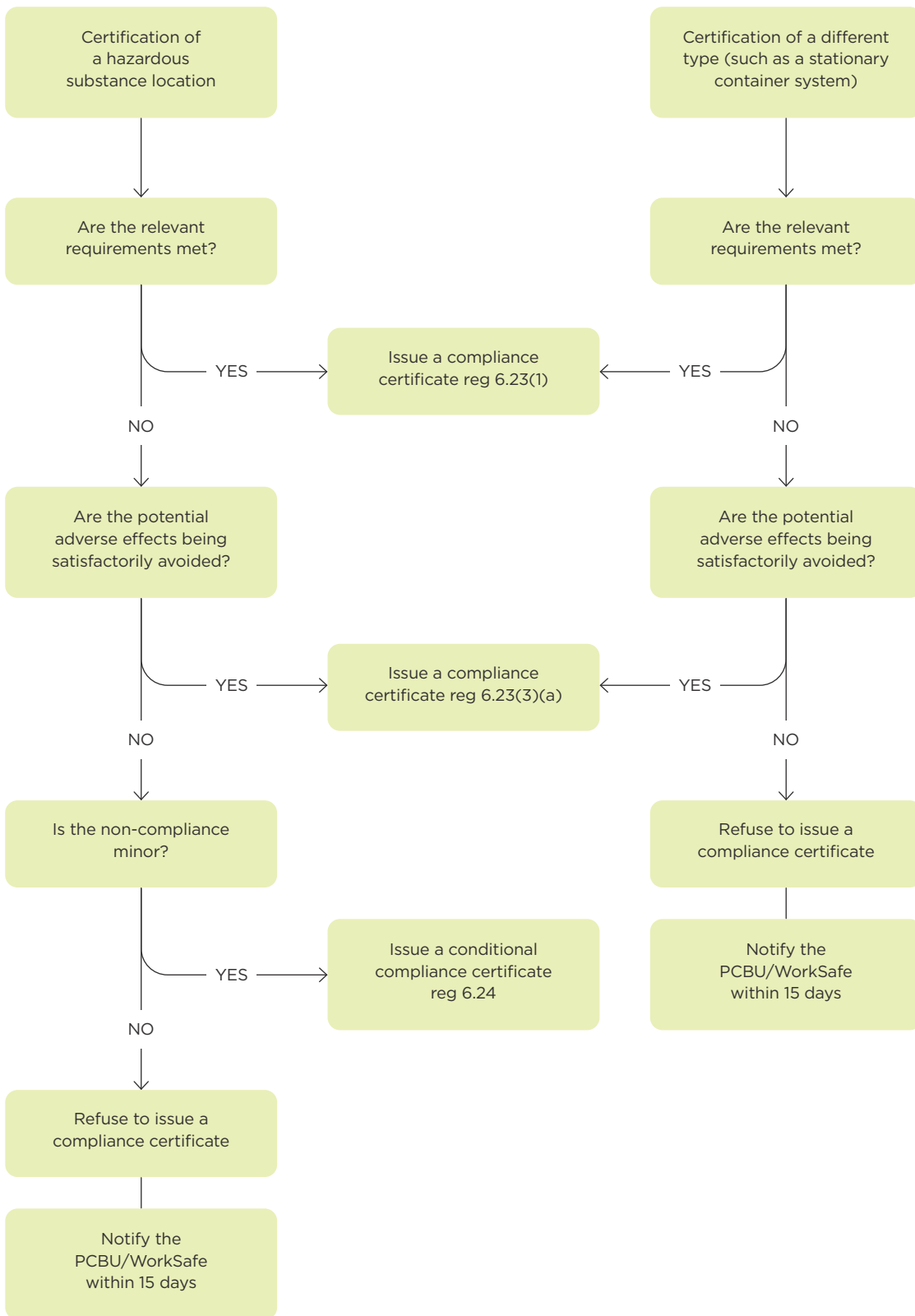


FIGURE 1: Framework for issuing compliance certificates and notifying WorkSafe of refusal to issue compliance certificates

Using discretion to decide whether to issue a certificate

Under regulation 6.23(3), you have the discretion to issue a certificate even when one or more of the requirements are not met.

You can only issue a certificate under regulation 6.23(3)(a) if you are sure any adverse effects have been 'satisfactorily avoided'. This means you must make sure the person conducting a business or undertaking (PCBU) has alternative controls in place to provide an equal or better level of risk management. There must be no increased risk because of the non-compliance.

To do this, you must assess the risk of the situation. You must also keep accurate records and any evidence to show how you reached your decision.

You should consider any alternative controls against the hierarchy of controls.⁴ Some types of controls are more effective than others. 'Engineering controls' make physical changes to the situation (for example, adding ventilation to remove flammable gases). These are more effective than 'administrative controls' (for example, changes to work practices), which can be subject to human error.

Where there is no change in risk due to a requirement not being met, alternative controls may not be required. For example, an insignificant shortfall in a separation distance. What is insignificant will depend on a variety of factors (for example, the hazardous substance and quantity, the surrounding environment), and will be identified from the risk assessment.

Regulation 6.23(3)(a) does not provide you with broad, unfettered discretion to accept alternative controls to those prescribed in the regulations. The Health and Safety at Work Act and the regulations have other mechanisms, for example safe work instruments and exemptions, to apply alternative standards or requirements that depart from those in the regulations. Your discretion to issue a compliance certificate under regulation 6.23(3)(a) is limited to situations where you are satisfied that any potential adverse effect from a requirement not being met have been satisfactorily avoided, and in practice that will be in situations where there is relatively minor non-compliance.

The risk must be managed at the time you carry out your inspection for issuing a certificate – you cannot issue a certificate on the basis the PCBU will take future action to manage the risk.

You should follow WorkSafe's position on discretion if you are considering issuing a certificate under regulation 6.23(3)(a): [What we expect when compliance certifiers apply discretion](#)

If you issue a certificate under regulation 6.23(3)(a), this regulation should be recorded on the certificate, along with the relevant requirement(s) that was not met.

Where further action may be required to avoid any potential adverse effect from the non-compliance, this could form the basis of a conditional certificate under regulation 6.24. But a conditional certificate can only be issued for a hazardous substance location and no other type of compliance certificate.

Issuing a conditional certificate

You can issue a conditional compliance certificate for a hazardous substance location that is non-compliant if you are satisfied that:

- i. any potential adverse effects from the non-compliance can be satisfactorily avoided; and
- ii. the non-compliance is minor, which means that the risk from the non-compliance must also be minor.

You will use your discretion to assess what is or is not minor.

When issuing a conditional certificate, you will set conditions for the PCBU to correct the non-compliance and bring the location into full compliance. These conditions must be specified on the certificate.

The PCBU must be capable of resolving the non-compliance within three months. If the conditions cannot be met within three months, the non-compliance cannot be considered minor.

You must be realistic about how long it will take for the PCBU to meet the conditions. You should consider the shortest possible time, instead of defaulting to the maximum three-month period allowed in the regulations.

A non-compliance is not 'minor' if the site needs large-scale construction work to meet the relevant requirement. This is because large-scale construction work is unlikely to be finished in three months.

The conditions must be specific to the particular non-compliance that needs to be resolved. Conditions that delay remedial action by the PCBU should not be the basis for a conditional certificate. For example, 'make an application to WorkSafe for an exemption' is not a suitable condition that can be used to justify a conditional certificate.

You must refuse to issue a conditional certificate if the risk assessment shows that:

1. the non-compliance can't be resolved within three months, or
2. failure to meet the relevant requirement would allow a risk that is not minor.

⁴ Health and Safety at Work (General Risk and Workplace Management Regulations) 2016.

Risk assessment

You must do a risk assessment before issuing a certificate under regulation 6.23(3)(a) or conditional certificate under regulation 6.24. The risk assessment must consider the protection of workers and other people against harm to their health, safety and welfare, which could include risks to buildings and other structures. Risks to the natural environment are not a consideration.

In some cases, particularly at sites operated by large or multi-national companies, the PCBU may do their own risk assessment or commission a third party (consultant) to do it for them. Where this occurs, you may use that assessment to inform your decision making.

Conducting a risk assessment

A risk assessment will help you decide if a compliance certificate can be issued. Every site is different, so you must not make generalisations. Something that is 'low risk' at one site might be 'high risk' at another.

Every risk assessment needs to be well documented and show you used a logical process before deciding whether to issue a certificate.

In most cases, a qualitative risk assessment should be adequate and there are a variety of common tools for this.

Where you are considering a conditional certificate, the detail necessary in the risk assessment depends on the number and severity of the non-compliances.

Factors to consider when assessing risk

The risk assessment should consider all relevant matters at the location. These will depend on the circumstances and class of hazardous substance, but should include:

REQUIREMENTS

- The number and type of relevant requirements that are not met.
- If one non-compliance could worsen another non-compliance. For example, if there is no emergency response plan and the workers are not adequately trained and supervised, then this could worsen any incident because untrained workers will not be able to rely on a response plan.

HAZARDOUS SUBSTANCE(S)

- The hazardous properties of the substance.
- The quantity of hazardous substance at the location.
- The physical form of the substance (for example, a solid, liquid or gas, including whether the substance is likely to liquefy in a fire).
- How the hazardous substance is stored at the location (for example, in a stationary tank, drums or small packages or in a dedicated standalone store or a store within a building).

- How the hazardous substance is used or handled (such as manufacturing in a closed process, or in an open process where there is greater risk of the substance escaping).
- The potential for the hazardous substance to escape from the site, come into contact, mix and react with incompatible substances or materials, or release toxic gases or fumes.

PEOPLE, STRUCTURES AND OTHER MATTERS

- The number of people working at the hazardous substance location and other people on site, and how they could be exposed to the hazardous substances.
- How close the hazardous substance location is to buildings or properties (onsite or offsite) that could be affected by an incident.
- How long it could take for the PCBU to meet the conditions specified on the conditional certificate and the willingness and attitude of the PCBU to comply.
- Whether the risk could change over the duration of the conditional certificate while the non-compliance is being resolved.

You may consider other factors when assessing the risk, but these must relate to the non-compliance (and not to other health and safety risks you may have seen on site). This does not remove your responsibility to bring other health and safety matters you notice to the attention of the PCBU.

You should not rule out a conditional certificate just because of the hazardous properties of the substance. For example, a conditional certificate could be issued for a hazardous substance location with class 1 substances if the risk assessment showed the risk from non-compliance was minor.

The regulations do not limit the number of non-compliances that you may accept. However, the [Health and Safety at Work \(Hazardous Substances – Location Compliance Certification for Classes 2 to 6 and 8\) Performance Standard 2021](#) states that at four or more non-compliances, you must consider refusing to issue a conditional certificate.

You should also consider if a particular non-compliance is a full failure or a partial failure. For example, a PCBU who needs signage on a dangerous goods store. If the PCBU has no signage, then this might be a full failure. If they have signage but it is missing some information, then this might be a partial failure.

What is considered 'minor'?

Requirements you may consider minor are listed in the table below (Table 1), along with examples of factors that could be considered.

Not every requirement applies to every class of substance. For example, documented procedures are only relevant for class 5 substances.

For each requirement, there will be a range of risk from minor to not minor, depending on the particular circumstances. What is considered minor for one location may not be minor at another. You must avoid generalisations and consider each workplace and location as unique.

The examples in the table are the starting point of what to consider as minor. In listing the examples, a broad approach has been adopted so you have the widest discretion possible. The risk assessment will show whether the non-compliance is or is not minor and whether a conditional location certificate can be issued.

You must apply your professional knowledge and expertise objectively and impartially when assessing whether a requirement is minor or not minor. If there is any ambiguity or you are in any doubt, then it is likely the matter is not minor.

You must keep accurate records of what you determine to be minor and why. Because there will always be an element of subjectivity in the risk assessment, maintaining detailed records is an important safeguard for you if WorkSafe or any other agency reviewed your decision.

REQUIREMENT	EXAMPLES OF FACTORS TO CONSIDER WHEN ASSESSING WHAT MAY BE MINOR
Notification to WorkSafe	<ul style="list-style-type: none"> - Evidence of notification or whether a previous certificate has been issued. - When notification was made and if quantities at the site have changed. - Whether an inventory is available.
Security	<ul style="list-style-type: none"> - There is no physical means of security, but written protocols are in place to restrict access. - Untrained workers may have unfettered access to the hazardous substances. - There is a total absence of security and procedures.
Training	<ul style="list-style-type: none"> - Staff have been trained, but there are no records to verify this. - The training is not specific to the particular hazardous substances and risks. - Certified handlers are required, but certificates for the current holders are out of date. - No training has been given and there is no obvious supervision.
Signage	<ul style="list-style-type: none"> - Signage is present, but some minor issues (for example, fading or HAZCHEM lettering is too small). - The signage is partly obscured. - Signage is not correctly positioned at the required entrances to the rooms, buildings, land and/or outdoor area. - There is a total absence of signage.
Emergency management	<ul style="list-style-type: none"> - Fire extinguishers are available, but of the wrong capability and/or not readily accessible. - The availability and adequacy of a spill kit. - An emergency management plan is available, but it is out of test. - The plan is not adequate for the substances and site operations. - The plan lacks information or detail. - There is no written plan, but workers know how to respond in an emergency. - There is no plan, and workers have no awareness of emergency procedures.
Secondary containment	<ul style="list-style-type: none"> - Secondary containment is present, but it is marginally less than the required capacity for the quantity held; quantities can be temporarily reduced. - Secondary containment can be implemented through the use of spill trays. - There is no secondary containment and major engineering works are required to remedy this.
Site plans	<ul style="list-style-type: none"> - A site plan is available, and while some features are missing, the plan provides a sufficient representation of the site for emergency respondents. - The plan is not drawn to scale. - The plan does not show all hazardous substance locations or required distances. - The site is large and complex, and no plan is available to you.
Separation and controlled zones distances	<ul style="list-style-type: none"> - Distances are marginally short and can be corrected by moving the hazardous substances. - An intervening wall is in place, but the wall does not meet the required fire resistance rating, is of insufficient length or has penetrations through it. - Distances cannot be met without major engineering works or other changes at the workplace.

REQUIREMENT	EXAMPLES OF FACTORS TO CONSIDER WHEN ASSESSING WHAT MAY BE MINOR
Building construction requirements	<ul style="list-style-type: none"> - The PCBU has no documentation to demonstrate the fire-resistance rating of the store or workroom. - Some parts of the building may not be fully rated (for example, a fire door). - Whether there are openings or penetrations in a fire rated wall that compromise its fire resistance rating. - The magnitude of engineering works that may be required to correct the building type.
Temperature control	<ul style="list-style-type: none"> - Control temperatures have not been determined. - No temperature control plan is in place. - The store is susceptible to elevated temperatures from solar heating (for example, an exposed metal shed).
Documented procedures	<ul style="list-style-type: none"> - Documented procedures are available but not considered adequate for the substances held. - Workers have not been trained in the procedures. - There are no documented procedures, but unwritten systems are in place.
Personal protective equipment (PPE)	<ul style="list-style-type: none"> - PPE is available but is not compatible with the particular substances. - PPE is serviceable and correctly maintained, but documentation is lacking. - PPE is available but information and training on its use has not been provided.

TABLE 1: Examples of factors to consider when assessing what may be minor

What is not considered ‘minor’?

Because of the potential risk arising from non-compliance with the following requirements, these should not be considered minor:

- establishing and maintaining hazardous atmosphere zones
- segregation of incompatible substances
- the control of unintended ignition.

You should not consider issuing a conditional certificate if any of these requirements are not met. If you refuse to issue a certificate and you must notify WorkSafe of this refusal.

Issuing a location certificate under regulation 6.23(3)(a) compared with a conditional certificate under regulation 6.24

For hazardous substance locations, you may have the option of issuing a location certificate under regulation 6.23(3)(a) or a conditional certificate under regulation 6.24 (refer to Figure 1).

With regulation 6.23(3)(a), you must have determined the adverse effects have been satisfactorily avoided because there are alternative controls in place to manage the risk. With a conditional certificate, the PCBU can remain non-compliant, but for no more than three months. After this time, the PCBU must be fully compliant with the regulations.

Full compliance with the regulations should always be the goal. For example, you may consider a site plan without a north point or property boundary eligible for a compliance certificate under regulation 6.23(3)(a). But because these non-compliances can be quickly fixed, issuing a conditional certificate under regulation 6.24 should be favoured as this leads to full compliance.

Refusing to issue a compliance certificate

If you consider a relevant requirement has not been met, and regulations 6.23(3)(a), 6.23(3)(b) and 6.24 do not apply, you must refuse to issue a compliance certificate.

You must notify the applicant and WorkSafe in writing of the refusal and the reasons for the refusal. The notification must meet the [Health and Safety at Work \(Hazardous Substances - Information and Process Requirements for Compliance Certifiers\) Amendment Performance Standard 2023](#)

Where multiple requirements are not met (for example, a hazardous substance location that is non-compliant with signage, training and emergency response planning), you should make one notification to WorkSafe, and not separate notifications for each individual non-compliance. All unmet requirements must be listed on that notification.

While you may want to help PCBUs come into compliance, this should not extend to more than 20 working days following your initial assessment. If the non-compliance(s) cannot be resolved in that time and a certificate cannot be issued under regulations 6.23(3)(a) or 6.24, you must make a notification of refusal to issue a compliance certificate. You should not delay making a decision (from your initial assessment) to avoid having to notify.

Notification may not be required every time a compliance certificate is not issued. For example, where a person applies for a certified handler certificate or approved filler certificate for the first time, notification should not be required if:

- the applicant has withdrawn their application before you have issued a decision; or
- you have temporarily deferred your decision pending further steps. For example, the applicant has some level of knowledge and experience with the hazardous substance, but you advise that further training is required.

The situations where notification may not be required can arise during applications for the following types of certificates:

- approved fillers
- certified handlers
- design verification for cylinders
- design of stationary tanks or process containers
- design of tank wagons and transportable containers
- fabricators for a stationary tank or process container
- importation or manufacture of LPG fittings
- outdoor pyrotechnic displays (if no pyrotechnics are present at the display location).

More information

[What we expect when compliance certifiers apply discretion](#)

[Health and Safety at Work \(Hazardous Substances - Location Compliance Certification for Classes 2 to 6 and 8\) Performance Standard 2021](#)

[Health and Safety at Work \(Hazardous Substances - Information and Process Requirements for Compliance Certifiers\) Performance Standard 2019](#)

[Health and Safety at Work \(Hazardous Substances - Information and Process Requirements for Compliance Certifiers\) Amendment Performance Standard 2023](#)

[Health and Safety at Work \(Hazardous Substances\) Regulations 2017](#)

[Quick guide](#)

[Hazardous substance risk management, 2017](#)

[Fact sheet](#)

[Refusing to issue a compliance certificate, 2018](#)