

EXPLANATORY STATEMENT

Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021

Overview

The Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing (the **Minister**) has made the *Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021* (the **New Safety Standard**), pursuant to section 104 of the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

The New Safety Standard comes into effect on the day after registration on the Federal Register of Legislation. A transitional period of 12 months will apply during which suppliers may either supply portable non-aerosol fire extinguishers that comply with the New Safety Standard or the repealed safety standard. At the end of the transitional period suppliers must comply with the New Safety Standard only.

The purpose of the New Safety Standard is to reduce the risk of serious injury or death to users of portable non-aerosol fire extinguishers, or people in close proximity to a fire, from defective or incorrectly marked products. Therefore, it sets requirements for the design, construction, performance, testing, instructions and marking of these portable non-aerosol fire extinguishers.

Repealed safety standard

The repealed safety standard for portable non-aerosol fire extinguishers was the *Consumer Protection Notice No. 3 of 2004* (Consumer Product Safety Standard: Portable Fire Extinguishers) (Federal Register of Legislation No. F2005B01048), (the **Repealed Safety Standard**).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Cth), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Requirements of the New Safety Standard

The New Safety Standard applies to portable non-aerosol fire extinguishers. A **portable non-aerosol fire extinguisher** is defined in the New Safety Standard as an appliance that is:

- a portable fire extinguisher; and
- not an aerosol fire extinguisher.

The New Safety Standard requires the supply of portable non-aerosol fire extinguishers to comply with the latest voluntary Australian/New Zealand standard AS/NZS 1841.1:2007 (with variations), and AS/NZS 1841:2007 Parts 2 to 8, as particularised in the instrument and to the extent that they apply to the fire extinguisher being supplied.

The New Safety Standard continues to address the same hazards as the Repealed Safety Standard and includes updated requirements to better account for industry practices. It also includes a new scope of supply in section 6 which sets out that the standard does not apply to second-hand portable non-aerosol fire extinguishers unless:

- the fire extinguisher has been imported into Australia; and

- the fire extinguisher is being supplied, or offered for supply, to a person or persons within Australia for the first time after being imported.

This is intended to reduce the regulatory burden on suppliers that previously had to test to the safety standard multiple times after first supply to the Australian market without a corresponding benefit. The safety standard continues to apply to new portable non-aerosol fire extinguishers supplied to Australia for the first time.

The safety standard also only applies to portable non-aerosol fire extinguishers that are 'consumer goods' within the meaning provided by section 2 of the Australian Consumer Law (ACL). If you are uncertain whether the products you intend to supply are required to comply with the New Safety Standard, you should obtain independent legal advice.

The New Safety Standard includes the following additional definitions:

aerosol fire extinguisher has the same meaning as in AS/NZS 4353:1995.

AS/NZS 1841.1:2007 means the Australian/New Zealand Standard AS/NZS 1841.1:2007 *Portable fire extinguishers Part 1: General requirements*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.2:2007 means the Australian/New Zealand Standard AS/NZS 1841.2:2007 *Portable fire extinguishers Part 2: Specific requirements for water type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.3:2007 means the Australian/New Zealand Standard AS/NZS 1841.3:2007 *Portable fire extinguishers Part 3: Specific requirements for wet chemical type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.4:2007 means the Australian/New Zealand Standard AS/NZS 1841.4:2007 *Portable fire extinguishers Part 4: Specific requirements for foam type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.5:2007 means the Australian/New Zealand Standard AS/NZS 1841.5:2007 *Portable fire extinguishers Part 5: Specific requirements for powder type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.6:2007 means the Australian/New Zealand Standard AS/NZS 1841.6:2007 *Portable fire extinguishers Part 6: Specific requirements for carbon dioxide type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.7:2007 means the Australian/New Zealand Standard AS/NZS 1841.7:2007 *Portable fire extinguishers Part 7: Specific requirements for vaporizing liquid type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 1841.8:2007 means the Australian/New Zealand Standard AS/NZS 1841.8:2007 *Portable fire extinguishers Part 8: Specific requirements for non-rechargeable type extinguishers*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

AS/NZS 4353:1995 means the Australian/New Zealand Standard AS/NZS 4353:1995 *Portable fire extinguishers—Aerosol type*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand.

incorporated has the meaning given by subsection 7(2).

portable fire extinguisher means an appliance that:

- contains an extinguishant that can be discharged onto a fire by the action of internal pressure; and
- is designed to be carried and operated by hand; and
- is designed to have a gross mass of not more than 23 kilograms.

transitional period means the period of 12 months beginning on the day this instrument commences.

Portable aerosol fire extinguishers

Portable aerosol fire extinguishers are a separate product class not covered by the New Safety Standard. Instead, suppliers of portable aerosol fire extinguishers must comply with a separate mandatory safety standard, the Consumer Protection Notice No. 9 of 2004 (Consumer Product Safety Standard: Portable Fire Extinguishers: Aerosol Type) (Federal Register of Legislation No. F2005B01049).

Access to the voluntary Australian/New Zealand standards

Where practicable, product safety legislative instruments only reference extrinsic material that is readily accessible for free to the public. However, as in the current case, many product safety legislative instruments need to incorporate extrinsic technical standards over which certain bodies have copyright.

The Australian/New Zealand Standards referenced in this instrument are available for purchase at SAI Global's website (<https://www.saiglobal.com>) or at Techstreet's website (<https://www.techstreet.com>).

The Australian Competition and Consumer Commission (**ACCC**) can make a copy of the standards referenced in this instrument available for viewing at one of its offices, subject to licensing conditions.

Transitional arrangements

The instrument provides a transitional period of 12 months beginning on the day this instrument commences. During the transitional period, suppliers must meet the requirements of either:

- the *Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021*, or
- the *Consumer Protection Notice No. 3 of 2004 (Consumer Product Safety Standard for Portable Fire Extinguishers)*.

After the transitional period, suppliers must meet the requirements of the *Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021*.

Consultation

The ACCC published a consultation paper in September 2019 and detailed the following policy options:

- Option 1 – Maintain the current mandatory standards (status quo)
- Option 2 – Make a new mandatory standard for non-aerosol fire extinguishers and maintain the current mandatory standard for aerosol fire extinguishers
- Option 3 – Revoke the mandatory standards.

The ACCC's preliminary position outlined in the consultation paper supported option 2 as this option would provide the greatest benefit for consumers, suppliers and regulators.

The ACCC received 8 submissions from 5 suppliers, one industry representative, one government agency and one international standards-setting body. Seven were in favour of updating the safety standard for portable non-aerosol fire extinguishers to reference the latest voluntary Australian/New Zealand standards. One supplier supported the status quo.

Following the submission process the ACCC undertook additional consultation, analysis and scrutiny and reaffirmed that option 2 is likely to have the greatest net benefit to the Australian community.

Disallowance

The *Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021* is a legislative instrument for the purposes of the *Legislation Act 2003* (Cth). In accordance with the Australian Consumer Law, which is Schedule 2 of the *Competition and Consumer Act 2010* (Cth), the *Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021* is not subject to disallowance or sunseting under the *Legislation Act 2003* (Cth) on the grounds that the standard is part of an intergovernmental scheme and gives effect to agreements between the Commonwealth and each of the States, the Australian Capital Territory and the Northern Territory to create a single national consumer law for Australia, including a national product safety law. The making of this legislative instrument is authorised under the Australian Consumer Law. It is consistent with the purpose of section 44(1) in the *Legislation Act 2003* (Cth) that an instrument giving effect to a multilateral scheme is not subject to unilateral disallowance. To make it so would frustrate the importance of uniform product safety standards in reducing the supply of unsafe goods and related services for Australian consumers, which is a key part of the Australian Consumer Law as an intergovernmental scheme involving the Commonwealth and the States and Territories.

Commencement

The legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

Sunseting

This legislative instrument is not subject to sunseting due to section 54 of the *Legislation Act 2003* (Cth).

Regulation impact assessment

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR reference ID 43998).