

# Public consultation

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*HAZARDOUS SUBSTANCES  
SAFE WORK INSTRUMENTS*

June 2019



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## Purpose

This document seeks public comment on two amendments to existing safe work instruments (SWIs) and one new SWI.

Your submissions will help WorkSafe determine whether to specify:

- additional design standards for cylinders
- a new standard for low-pressure fire extinguishers and
- a standard for the design and construction of above ground stationary tanks.

The deadline for receipt of all submissions is **5 pm on Friday 5 July 2019**.

## How to have your say

Have your say by reviewing the proposed SWI and completing the submission form for the particular SWI.

WorkSafe would appreciate your feedback on the specific questions it has asked on each SWI. Note that the questions are prompts to get you thinking about the issues, and your comments are not restricted to answering these questions.

If you have any questions during public consultation please contact WorkSafe by emailing: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

## Your submission may be made public

Once you make your submission, anyone can ask for it under the Official Information Act 1982 (the OIA). If you have any queries about how the information your submission is dealt with, please contact WorkSafe at: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

Further information is available at: [www.legislation.govt.nz](http://www.legislation.govt.nz)

## What happens next

Once the consultation period has closed, we will analyse submissions and finalise the proposed SWIs in light of the feedback received. WorkSafe will provide a summary of submissions received and any changes to the draft SWIs. The SWI will then be presented to the Minister for approval.

## Executive summary

### What is a safe work instrument?

Safe work instruments (SWIs) are a tool provided for in section 227 of the HSWA. They are a type of subordinate instrument (sometimes called tertiary legislation) used to support or complement regulations.

A SWI has legal effect only to the extent it is referred to in regulations made under relevant health and safety legislation, such as HSWA. A SWI can be made for the purposes of defining terms, prescribing matters, or making other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.

In the context of the Regulations, they can also:

- set additional or modified requirements for the work-related use of hazardous substances approved or reassessed by the Environmental Protection Authority (EPA)
- provide an alternative means of complying with requirements in certain provisions of the HS Regulations.

Further information about safe work instruments can be found on WorkSafe's website: [worksafe.govt.nz](http://worksafe.govt.nz)

## Consultation for safe work instruments

SWIs are developed by WorkSafe and approved by the Minister for Workplace Relations and Safety. The Minister must not approve a SWI unless satisfied that appropriate persons and organisations have been consulted on it, having regard to its subject matter.

We are seeking your views on three SWIs that apply to work-related use of hazardous substances:

- amendments to a SWI to specify design standards for cylinders
- a new SWI to specify standards for low-pressure fire extinguishers and
- amendments to a SWI to specify a standard for the design and construction of above ground stationary tanks.

## Amendment to safety work instrument to specify design standards for refillable cylinders

Under regulation 15.8 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations), a PCBU who designs, manufactures, imports, or supplies a cylinder (other than a fire extinguisher) must ensure the design for the cylinder complies with an applicable standard listed in Schedule 21 of the Regulations or a relevant safe work instrument that specifies design standards for cylinders.

Schedule 21 of the Regulations lists design standards for cylinders; however, over time industry may need to design, manufacture, and import or supply a cylinder to a new standard not listed in the Schedule, or a standard listed in the Schedule may be replaced by a more up-to-date version.

If a cylinder design is not listed in Schedule 21 or covered by transitional arrangements in clause 17, Schedule 1 of the Regulations, it must be specified in a relevant SWI. In these cases, a SWI can be used to specify design standards.

The Health and Safety at Work (Hazardous Substances -Specification of Design Standards for Refillable Cylinders) Safe Work Instrument 2018 came into force on 1 August 2018. The purpose of this SWI is to specify design standards for refillable cylinders for the purpose of 15.8(1)(b) of the Regulation.

The Health and Safety at Work (Hazardous Substance-Specification of Design Standards for Refillable Cylinders) Safe Work Instrument Amendments 2019 will add six additional standards to the SWI.

This proposed SWI provides for six additional standards to be incorporated into Schedule 1 namely:

- DOT-SP 7235, 25th revision - Fibre-reinforced plastic hoop-wrapped cylinders conforming to DOT FRP-2 Standard Revision 1
- DOT-SP 8725, 22nd - Fibre-reinforced plastic hoop-wrapped aluminium cylinders conforming to DOT FRP-2 Standard Revision 1

- DOT-SP 9634, 10th revision - Fibre-reinforced plastic full composite cylinder conforming to DOT FRP-1 Standard Revision 2
- DOT-SP 12098, 9th revision - Welded spherical cylinders for use in a re-breather unit, conforming to DOT 3HT
- ISO 11119-3:2013 - Welded spherical cylinders - refillable composite gas cylinders and tubes - Design, construction and testing - Part 3, and
- ISO 3807:2013 - Gas cylinders - Acetylene cylinders - Basic requirements and type testing.

The relevant referring provision of the Regulations that enables the development of this SWI is 15.8(1)(b).

The standards and revisions listed in this SWI will be incorporated for the purposes of regulation 15.8 from the commencement of the amended SWI, if approved.

### Safe work instrument to specify standards for low-pressure fire extinguishers

Under regulation 15.23 of the Regulations, a PCBU who designs, imports, or supplies a low-pressure fire extinguisher must ensure that the design of the low-pressure fire extinguisher complies with 15.23(1)(a) and (b) or a relevant safe work instrument that specifies design standards relating to low-pressure fire extinguishers.

The proposed Health and Safety at Work (Hazardous Substances - Specification of Design Standard for Low-Pressure Fire Extinguisher) Safe Work Instrument 2019 specifies a standard for low-pressure fire extinguishers.

This proposed SWI provides for a European standard BS EN 1866-2:2014, Mobile fire extinguisher, to be incorporated. The standard will be incorporated for the purposes of regulation 15.23 from the commencement date of the proposed SWI, if approved.

The relevant referring provision of the Regulations that enables the development of this SWI is 15.23(1)(c).

### Amendment to safe work instrument to specify the design and construction of above ground stationary tanks

Under regulation 17.6 of the Regulations, a PCBU must ensure that an above ground stationary tank that is used to store hazardous liquids is designed and constructed in accordance with clause 6(1)(aa) to (j) or requirements in a relevant safe work instrument.

The proposed Health and Safety at Work (Hazardous Substances - Above Ground Stationary Tanks Connected to a Generator Set) Safe Work Instrument Amendments 2019 amends the Health and Safety at Work (Hazardous Substances - Above Ground Stationary Tanks Connected to a Generator Set) Safe Work instrument 2017.

This proposed SWI provides for a new standard, NFM 88 940:1981, to be added to clause 6(1). In addition, it specifies that the tanks to this standard must have a minimum wall thickness of 4mm.

The relevant referring provision of the Regulations that enables the development of this SWI is 17.6(1)(k).

## Costs and benefits of the proposed safe work instruments

The three proposed SWIs for hazardous substances carry over and update previous requirements, or supplement current requirements to ensure duty holders are able to comply with the Regulations.

### **AMENDMENT TO SAFE WORK INSTRUMENT TO SPECIFY DESIGN STANDARDS FOR REFILLABLE CYLINDERS**

In the case of the SWI to specify design standards for refillable cylinders, the SWI updates standards. Industry requested the new standards which are considered to provide easily sourced and safely built cylinders.

### **SAFE WORK INSTRUMENT TO SPECIFY STANDARDS FOR LOW-PRESSURE FIRE EXTINGUISHERS**

In the case of the SWI to specify standards for low-pressure fire extinguishers, the SWI ensures duty-holders are able to carry out their business in compliance with the Regulations while remaining up to date with industry developments. This standard is similar to other standards already incorporated into Schedule 21. It will enable import and distribution of large mobile fire extinguishers and provide more choice to consumers.

### **AMENDMENT TO SAFE WORK INSTRUMENT TO SPECIFY A STANDARD FOR THE DESIGN AND CONSTRUCTION OF ABOVE GROUND STATIONARY TANKS CONNECTED TO A GENERATOR SET**

In the case of the SWI to specify the design and construction of above ground stationary tanks, the SWI ensures the duty-holders are able to carry out their business in compliance with the Regulations by allowing the use of generator tanks designed to this standard.

## Standards referenced in safe work instruments

A number of standards are incorporated by reference in the proposed SWIs. These standards are available for inspection, at no charge, between the hours of 9:00 am and 5:00 pm from Monday to Friday (excluding statutory holidays) at:

- WorkSafe New Zealand, Level 6, 86 Customhouse Quay, Wellington 6011.
- You may also contact WorkSafe using the following email to arrange to view the material incorporated by reference: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

**You are invited to provide your feedback on the proposal to incorporate standards by reference when completing the public consultation submission form.**

## **Implementation**

Following consultation, the proposed SWIs will be finalised and then submitted to the Minister for Workplace Relations and Safety for the Minister's consideration.

The SWIs will take effect once approved. This is planned for August 2019.

The SWIs will be published on WorkSafe's website once they are approved. WorkSafe will inform you when they are published.

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[worksafe.govt.nz](http://worksafe.govt.nz)



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