

# DECISION TO ISSUE FIRE FIGHTING CHEMICALS GROUP STANDARD 2021, AND REVOKE FIRE FIGHTING CHEMICALS GROUP STANDARD 2017 (AS AMENDED 2020)

## 1. Summary

Substance	Group standard
Application code	APP204119
Applicant	The Chief Executive of the Environmental Protection Authority (“the EPA”)
Application type	To revoke the Fire Fighting Chemicals Group Standard 2017 (as amended 2020), as provided by section 96D of the Act  To issue the Fire Fighting Chemicals Group Standard 2021, as provided by section 96B of the Hazardous Substances and New Organisms (HSNO) Act 1996 (“the Act”)
Consultation period	8 June 2020 – 4 August 2020
Number of submissions received	28 during the public consultation
Consideration date	11 March 2021
Decision-maker	Decision Making Committee of the EPA (the Committee), composed of:  Dr Louise Malone (Chair); Dr John Taylor.
Decision	<b>The Fire Fighting Chemicals Group Standard 2017 (as amended 2020), is revoked, and ceases to have effect on 30 April 2021</b>  <b>The Fire Fighting Chemicals Group Standard 2021, is issued, and takes effect on 30 April 2021</b>
Approval code	HSR002573

## 2. Background and discussion

- 2.1. The EPA is currently working through a process to update the current classification system for hazardous substances to Revision 7 (2017) of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS 7).
- 2.2. The GHS is an internationally-agreed system developed by the United Nations (UN) to classify chemicals and to communicate their hazards through labels and safety data sheets. Applying the GHS 7 will ensure New Zealand has an internationally-aligned classification system that facilitates trade and increases the effectiveness of chemicals management under the Hazardous Substances and New Organisms Act 1996 ("the Act").
- 2.3. As part of the process, from October 2019 to January 2020, the EPA consulted on a proposal to adopt GHS 7. The consultation sought comments on five specific proposals and seventy-one submissions were received. The result of the consultation was that the EPA proceeded with implementing GHS 7.
- 2.4. The new classifications will be implemented by:
  - revoking the current Minimum Degrees of Hazard Notice 2017 and Classification Notice 2017; and
  - issuing a new Hazard Classification Notice 2020 that will incorporate the GHS 7 classifications by reference to the corresponding sections of the GHS 7 document. The Notice will also include classifications for terrestrial ecotoxicity.
- 2.5. Consequential amendments will be made to six other EPA Notices to give effect to the new Hazard Classification Notice. The relevant Notices are the Labelling, Safety Data Sheets, Packaging, Disposal, Hazardous Property Controls, and Importers and Manufacturers Notices.
- 2.6. The EPA Board approved the Hazardous Substances (Hazard Classification) Notice 2020 and the EPA Notices (Amendments and Revocations) Notice 2020 on 15 October 2020. These notices will come into force on 30 April 2021.
- 2.7. One of the consequences of adopting GHS 7 is that all HSNO hazardous substance approvals and group standards must be updated to apply GHS 7 classifications. The EPA released a second consultation document in June 2020 to request feedback on a number of proposals relating to this work.
- 2.8. On 19 October 2020, a decision making committee decided to revoke 209 existing group standards and issued a new set of 207 group standards, which covered all the group standards, except the Fire Fighting Chemicals Group Standard 2017. At that time, the Fire Fighting Chemicals Group Standard 2017 (HSR002573) was undergoing a separate amendment process to incorporate changes to the Stockholm Convention which are to be implemented into New Zealand law (Stockholm amendment). The scope of the Stockholm amendment does not overlap with the scope of updating the group standards to GHS 7.
- 2.9. The process to update the Fire Fighting Chemicals Group Standard 2017 with the Stockholm amendment has now been completed and this group standard is now being updated to incorporate GHS 7. This decision document covers the steps required to update the Fire Fighting Chemicals

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Group Standard, by revoking the existing Fire Fighting Chemicals Group Standard 2017 (as amended 2020), and issuing the Fire Fighting Chemicals Group Standard 2021.

### **3. Public consultation**

#### **Public consultation**

- 3.1. In accordance with section 96C(1)(h) and 96D of the Act, the EPA released a second consultation document related to the implementation of GHS 7. This second consultation specifically requested feedback on proposals to update all HSNO hazardous substance approvals and group standards, and to make a consequential change to the Hazardous Property Controls Notice.
- 3.2. Proposal 3 of the consultation document related to revoking the current set of group standards and issuing an updated set of group standards based on GHS 7 classifications rather than the existing alpha-numeric classification codes.
- 3.3. In addition to updating the group standards to apply GHS 7 classifications, a small number of other changes were proposed to some group standards. These changes were to correct minor technical errors that had been identified in the current group standards but none of these pertain to the Fire Fighting Chemicals Group Standard.
- 3.4. The consultation document is available on the [EPA website](#).
- 3.5. The consultation document was publically notified on the EPA website, and also emailed to relevant government agencies, industry associations and other interested parties (including submitters from previous relevant consultations). The consultation period was 8 June 2020 – 4 August 2020.
- 3.6. As there was a potential impact on trade, the consultation was also notified to the World Trade Organisation.
- 3.7. As the proposed group standards are versions of the same group standards that were issued in 2017, updated to refer to GHS 7 classifications, the consultation document did not include an explicit assessment of the matters required under section 96C(1)(a), (b), (c) and (e) of the Act.

#### **Submissions received and response to them**

- 3.8. Twenty eight submissions were received regarding the consultation, with twenty one making specific comments relating to the group standard proposals. These submissions and the EPA response to these are available on the EPA website. None of these submissions are relevant to the Fire Fighting Chemicals Group Standard so they, and the EPA response to them, are not repeated here.

## 4. Matters to be considered by the Committee

- 5.1. The matters to be considered by the Committee are the same as considered by the decision making committee when they revoked the existing 209 group standards and issued a new set of 207 group standards. It is repeated here as it has been considered for this decision.

### Legislative criteria for issuing, amending and revoking group standards

- 5.2. The relevant sections of the Act that deal with issuing, amending and revoking group standards are sections 96B, 96C and 96D.
- 5.3. As required by section 96D(1), the EPA publically notified its intention to revoke the Fire Fighting Chemicals Group Standard 2017.
- 5.4. As required by section 96C(1)(h), the EPA publically notified its intention to issue the Fire Fighting Chemicals Group Standard 2021.
- 5.5. Before issuing a group standard, section 96C(1)(a), (b) and (c) of the Act requires the Committee to be satisfied that issuing the group standard is a more efficient and effective way of managing the risks of all the hazardous substances in the identified group and, in relation to section 96C(1)(a), than the approval process in Part 5 of the Act.
- 5.6. Further, where a group standard applies to more than one hazardous substance, the Committee must be satisfied that all the hazardous substances in the identified group “*have a similar nature, are of a similar type, or have similar circumstances of use, such that the risks of the group of hazardous substances [...] can be effectively managed by 1 set of conditions*” (section 96C(1)(e)(ii)).
- 5.7. In addition, the Committee must consider best international practice and standards for the safe management of hazardous substances and the types of controls that are appropriate for each group standard in accordance with sections 77, 77A and 77B of the Act (section 96C(1)(f) and 96C(1)(g)).
- 5.8. Section 7 of the Act requires all persons exercising functions, powers and duties under the Act to take into account the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects.
- 5.9. The Committee considers that the Fire Fighting Chemicals Group Standard 2021, proposed to be issued, is substantially the same as the Fire Fighting Chemicals Group Standard 2017 (as amended 2020), proposed to be revoked, with the primary change being to update the hazard classifications to GHS 7. Therefore the analysis carried out when the original group standards were issued with respect to meeting the statutory requirements of s96(C) remains valid for this new group standard. A summary of consideration of these matters is provided below.

### ***Efficiency and effectiveness (section 96(C)(1)(a) – (c))***

- 5.10. As with the original group standard (as amended in 2020), the updated group standard will continue to provide a more efficient and effective way of managing the risks posed by the specific groups of substances for the following reasons:

- the group standard offers a level of risk management comparable with the level that would result with an approval under Part 5 of the Act;
- importers and manufacturers will achieve a predictable regulatory outcome through the use of a group standard. The conditions of use will be readily available to them if the group standard is issued, and importers and manufacturers will be aware of the framework of the group standard at the beginning of the regulatory process;
- the set of conditions that apply to a given substance under a group standard approval is consistent with other substances with similar properties;
- importers and manufacturers will achieve greater regulatory efficiency if the group standard is issued;
- reduced regulatory requirements for importers or manufacturers may result in a greater range of substances on the New Zealand market, which would provide greater choice for consumers, the opportunity for access to products with a reduced environmental impact and potential cost savings.

5.11. The Committee concludes that the management of risk for the group standard is comparable to the level of risk management under a Part 5 approval. The group standard is a more efficient and effective way of managing the risks of the groups of hazardous substances for the other reasons detailed above.

***Similar nature, type, circumstance of use/one set of conditions (section 96C(1)(e)(ii))***

- 5.12. The group standard has been developed for substances that the Committee considers to be of a similar nature, similar type and a similar circumstance of use, in accordance with the requirements of section 96C(1)(e)(ii) of the Act for issuing a group standard.
- 5.13. The Committee notes that in order for substances to be covered by an individual group standard, they would be required to meet the scope of the group standard which details certain hazardous properties, certain uses, certain types of substances to which the standard would apply.
- 5.14. The Committee is satisfied that these requirements ensure that the substances covered by a group standard would all present similar exposure risks; therefore we consider them to be of a similar nature.
- 5.15. The Committee considers that all substances covered by the group standard are of a similar type as they are required to have specific hazard classifications and a specified use.
- 5.16. The Committee notes that the substances covered by the group standard will be used in a similar fashion.
- 5.17. Because the substances to which the group standard apply are similar in key respects, the Committee considers that the risks the group of hazardous substances can be effectively managed by one set of conditions.

***Best international practices and standards (section 96C(1)(f))***

- 5.15. Before issuing or amending a group standard, section 96C(1)(f) of the Act requires that the Committee considers the best international practices and standards for the safe management of hazardous substances and products.
- 5.16. The Committee notes that the conditions contained within the group standard have been primarily drawn from the suite of controls prescribed in EPA Notices. In turn, many controls in the EPA Notices are based on the internationally accepted Globally Harmonised System of Classification and Labelling of Chemicals, and the Recommendations on the Transport of Dangerous Goods Model Regulations (“UNRTDG”) published by the UN. These UN documents have been developed by reputable international scientists, and they have been widely adopted and implemented internationally including by our main trading partners (Australia, USA, Canada, the European Union, China, Japan, and South Korea).
- 5.17. The Committee therefore considers that the conditions of the group standard are in line with international codes of practice and standards.
- 5.18. The Committee considers that, having regard to best international practices and standards, the group standard provide a regulatory regime that will sufficiently manage the risks posed by these substances.

***Conditions (section 96C(1)(g))***

- 5.19. The proposed group standard includes controls imposed on hazardous substances to which a group standard applies, in the form of conditions in Schedule 1 to the group standard. Section 96C(1)(g) of the Act requires the Committee to consider the types of controls appropriate for the substances covered by these group standards in accordance with sections 77 to 77B of the Act.
- 5.20. Section 76 of the Act allows the EPA to issue EPA Notices that prescribe controls for substances based on the hazard classification. The group standard imposes the requirements of the relevant EPA Notices as conditions and additional conditions.
- 5.21. The Committee has considered the conditions contained in the group standard, and assesses them as being types of EPA controls appropriate for each group standard, in accordance with sections 77, 77A and 77B of the Act.

***Achieving the purpose of the Act***

- 5.22. The purpose of the Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms (section 4 of the Act).
- 5.23. In order to achieve the purpose of the Act, when considering the proposed group standard, the Committee has recognised and has provided for the following principles:
- the safeguarding of the life-supporting capacity of air, water, soil and ecosystems; and

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- the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social and cultural well-being and for the reasonably foreseeable needs of future generations.

5.24. The Committee considers the group standard is an effective way to manage the risks of similar substances over their lifecycle. The controls imposed under the group standard ensure that substances are managed in an appropriate manner to ensure the life-supporting capacity of all the environmental elements is safeguarded. The group standard also will maintain and enhance the capacity of people and communities by allowing them to use substances in a safe and appropriate manner, subject to appropriate conditions.

5.25. The Committee took into account the following matters when considering the proposed group standard in order to achieve the purpose of the Act:

- The sustainability of all native and valued introduced flora and fauna;
- The intrinsic value of ecosystems;
- Public health;
- The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga;
- The economic and related benefits and costs of using a particular hazardous substance or new organism;
- New Zealand's international obligations;
- The need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects; and
- The principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

5.26. The Committee considers the group standard to be a good way to control substances to achieve the purpose of the Act. The controls required by the group standard safeguard the sustainability of flora and fauna and the value of ecosystems by taking into account the hazard classification of different types of substances and imposing appropriate controls over the lifecycle of the substance. The controls imposed on substances that relate to human health identify any potential adverse effects, provide the means to eliminate or reduce them to negligible levels and help guard public health. This group standard allows for the economic and related benefits of a hazardous substance to be identified in that it promotes innovation by decreasing compliance costs for new hazardous substances. The group standard only allows for inclusion of hazardous substances that comply with the scope of the group standard, allowing the adoption of a cautious approach in managing adverse effects of these substances. The group standard is consistent with New Zealand's international obligations as it requires compliance with the EPA Notices which are consistent with New Zealand's international obligations.

5.27. The EPA sent the consultation document that fed into this decision to Te Herenga, the EPA's national network of Māori environmental practitioners and kaitiaki. The group standard is a crucial part of the framework that helps protect people, communities and the environment from the adverse effects of

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hazardous substances, which is consistent with Māori environmental values and the principles of the Treaty of Waitangi.

- 5.28. The Committee is satisfied that this decision is consistent with the purpose of the Act and the above principles and matters. Any substantive issues arising from the legislative criteria and issues raised by submitters have been discussed in the preceding sections of this decision.

### **Notice of revocation and issuance of Group Standards**

- 5.29. A formal notice of the revocation of the Fire Fighting Chemicals Group Standard 2017 (as amended 2020), and issue of the Fire Fighting Chemicals Group Standard 2021 will be published in the New Zealand Gazette.
- 5.30. Pursuant to section 96B(6) of the Act, as soon as practicable after issuing a group standard, the EPA must:
- a. publish the group standard in a publication relevant to affected persons; and
  - b. make the group standard available to be inspected free of charge and purchased at a reasonable price; and
  - c. give public notice of where the group standard can be inspected or purchased.
- 5.31. These requirements will be met once the new group standard is made available on the EPA website, and directly from the EPA's offices in the form of electronic access to the EPA website or access to hard copies.



## 5. Decision

### Decision to revoke the Fire Fighting Chemicals Group Standard 2017 (as amended 2020), HSR002573

- 6.1. Having ensured that the requirement of section 96D of the Act has been met, the Committee revokes the Fire Fighting Chemicals Group Standard 2017 (as amended 2020), HSR002573, and directs that a notice advising of this be prepared and published in the New Zealand Gazette as required under the Act.

### Decision to issue the Fire Fighting Chemicals Group Standard 2021, HSR002573

- 6.2. Having regard to the matters in sections 96B, 96C and taking into account the relevant matters in Part 2 of the Act, the Committee issues the Fire Fighting Chemicals Group Standard 2021, HSR002573 and directs that a notice advising of this be prepared and published in the New Zealand Gazette as required under the Act. The full text of the Fire Fighting Chemicals Group Standard 2021 is attached in Appendix 1.
- 6.3. The Committee considers it appropriate that the group standard comes into force on 30 April 2021 on the same date as the new EPA Notices establishing the new hazard classification system.
- 6.4. The Committee recommends that EPA produce accompanying guidance material to assist users of the group standard with its interpretation, and to inform users of their obligations and requirements for substances approved under the group standard.



Signed by: **Dr Louise Malone**

**Date: 11 March 2021**

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**Chair, Decision Making Committee**

**Environmental Protection Authority**

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