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HEALTH AND SAFETY COMMISSION
ADVISORY COMMITTEE ON TOXIC SUBSTANCES

Publication of information on limits that lack a robust scientific basis.

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Issue

1. How to deal with OELs in EH40 that do not meet the criteria in EH 40 for setting OELs.

Timing

2. Routine- but a decision should be made at the November ACTS meeting to inform the publication of OELs during 2003.

Recommendation

3. That members complete the actions in paragraph 25.

Background

- 4 Annex D of ACTS Paper 43/02 outlines the various options for transferring existing OELs into a new OEL framework. It presents the results of a screening exercise whereby the scientific robustness of all existing OES and MEL values was evaluated. In this exercise, OELs were categorised as being "unsafe", "of concern", "uncertain" or "well-founded" according to the criteria laid out in Annex D. Paper 43/02 identifies 89 OESs and 56 MELs that are deemed to be well founded (ie based on a post-COSHH WATCH/ACTS review or implementing an IOELV). This leaves 350 OESs and 13 MELs in the other categories.
- 5 Legal advice is that there is a duty on HSE to make information on the robustness of the existing limits as widely known as possible. Although many of these OESs have been in place since COSHH was introduced in 1988, only recently, as part of the OEL framework review, has HSE systematically looked at the evidence base for many of these OESs. However, there are a few cases where evidence has emerged since 1988, and in these cases, action has been taken. To continue to publish these unsafe, of concern or uncertain limits in EH40 would mislead readers into thinking that they meet the criteria for setting OELs set out in EH40. This is particularly problematical with those identified as unsafe or of concern.
- 6 There is a need to address OESs and MELs in different ways. HSE has developed 4 options to address the OESs that are not well-founded on which it would value member's views. These options and an analysis of each one are set out in paragraphs 8-12 below.

- 7 A separate strategy to address MELs that may no longer be regarded as “well-founded” is set out in paragraph 13 below.

Argument

- 8 The options for addressing OESs that are not well-founded are:
 - i. Do nothing – publish EH40 2003 in January as usual - maintain the current level of limits with any amendments which result from CD 182 (see paper ACTS/44/2002);
 - ii. Consult on removing those OESs which are deemed to be unsafe or of concern-a total of 58 substances. This would involve publishing a Consultation Document in early 2003 and the publication of EH40 2003 in the autumn which would include any changes that result from the CD182 consultation;
 - iii. Consult on removing all of the 350 OESs that are not “well-founded” from the next planned publication of EH40, which will be known as EH40 2003. This would again involve publishing a Consultation Document in early 2003 and the publication of EH40 2003 in the autumn which would include any changes that result from the CD 182 consultation;
 - iv. Roll EH40 2002 forward to 2003 - publish an addendum which would contain new limits resulting from CD 182 and which would explain that there are a small number of limits which have been judged by the scientific staff of HSE and with the approval of ACTS not to meet the OES criteria set out in EH40. The addendum would add that there are a larger number of OESs for which there is concern or uncertainty regarding their scientific basis; a press release would publicise this addendum and explain that HSE will be consulting on these as part of the OEL framework later in the summer.

Analysis of options

- 9 Legal advice is that information those OESs with an uncertain scientific basis for which there are grounds for concern for health effects at the OES value should be made public. Option i, do nothing, is therefore not an option that would be suitable.
- 10 In terms of the remaining options, HSE is keen to ensure minimal confusion. The question is which option would best serve this purpose. Option ii is the least dramatic but this would leave 300 substances with an uncertain basis in EH40. This option would not address the legal problems associated with not making public information held by HSE.
- 11 Option iii is very dramatic and could cause great confusion amongst firms that use one or more of these 350 substances. There would cease to be a legal limit for all 350 substances, leaving employers to gather information and then decide for themselves what exposure limit to apply (paragraph 38 of the General COSHH ACOP refers). Although HSE would seek to publicise the changes as widely as possible, HSE believes that employers could mistakenly purchase EH40 and then find that the substance they are using no longer has a limit thus incurring a needless financial burden on employers.

- 12 This leaves Option iv. This option seems to be the most favourable. It maintains the legal limit in place whilst also communicating information that employers and users of chemicals need to know. It also prevents any needless financial burden on employers.
- 13 There is a need to treat MELs in a different way. MELs do not purport to be completely health protective – although the primary consideration is protection of health, socio-economic factors are also taken into account. Fortunately the majority of existing MELs are regarded as “well-founded”. Concerns surrounding those that may not be regarded as “well-founded” are mitigated by the fact that there is a legal duty associated with MELs to control exposure as low as is reasonably practicable.
- 14 In respect of the some non-well-founded MELs, concern is due either to toxicology or to the fact that the numerical value may no longer be appropriate ie what is reasonably practicable may now have changed due to changing technology. Where the concerns are due to changed technology, criterion 5 set out in EH40 would no longer be met. HSE therefore needs to explain that, although there are a small number of MELs that have been identified as not well-founded, it will be retaining these limits but will remind users that control of exposure will only be deemed as adequate if the level of exposure is reduced so far as is reasonably practicable. HSE proposes to use the addendum set out in option iv for this purpose.
- 15 On this basis, action has already been initiated with respect to the one MEL that has been identified as “unsafe”, ie respirable crystalline silica (0.3 mg.m³). HSE is currently seeking views from stakeholders on whether it would be reasonable for HSE to enforce at 0.1mg.m³ on the basis that this is now reasonably achievable by industry.

How should HSE publicise limits in future?

- 16 HSE believes that moving to a new OEL framework is an opportunity to consider how to publicise limits in future. There are a number of factors that need to be considered:
- New forms of communication particularly use of the Internet – HSE has been criticised by Internet users for not publicising the tables on the web;
 - Consideration of whether the text needs to be updated to explain the new criteria that will be used to set limits;
 - Consideration of the audience the publication is aimed at, including whether the text should be presented in a more modern, user-friendly form;
 - Revision of the layout of the tables to take account of links to Electronic COSHH Essentials such as the need to communicate information on good practice guidance.

Communication Plan

- 17 HSE will ensure that information on the scientific status of current limits is communicated as widely as possible. A media handling strategy will be developed to ensure that HSC/E does not lose stakeholder’s trust.

Evaluation Plan

18 If a new publication system is developed, plans for evaluation will be put in place to measure its success.

Relevant Control Systems

19 Not relevant.

Consultation

20 The ACTS sub groups on OELs has been consulted about this issue. HSE has also consulted its in house experts on risk communication about this issue.

Presentation

21 In order not to undermine trust in the system it is crucial that this information is presented in a way that prevents confusion and avoids unnecessary concern.

Costs and Benefits

22 It is important to choose the option that minimises costs whilst reflecting a spirit of openness by ensuring early access to this important information.

Financial/Resource Implications for HSE

23 There are no additional resource implications for HSE.

Environmental Implications

24 None

Action

25 Members are asked to:

- i. Consider the options in paragraph 8 and arguments in paragraphs 9-12.
- ii. Advise on which option to pursue.
- iii. Consider the proposal in paragraph 14 and either agree or suggest alternatives.
- iv. Note the proposals in paragraph 16 on how to publicise limits in future.

Contact

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