

## Certificate of Exemption under The Control of Substances Hazardous to Health [COSHH] Regulations 1994

◆OC 273/14

### Target Audience:

All FOD Inspectors (Bands 0-4)  
All CHID Inspectors (Bands 0-3)  
Regional Support Managers (Band 3)  
Administrative Managers (Band 4)  
Railway Inspectors (Bands 0-3)

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## SUMMARY

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This OC details revised procedures for dealing with applications for exemption from the COSHH Regulations 1994 for manufacture, use and importation of banned carcinogenic substances. The information document (ID) may be copied and given to interested people outside HSE. Implications for staff will be limited to those involved in the topic: in the receipt and consideration of applications, and the granting of certificates.

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## INTRODUCTION

1 HSA Note 51/1997 announced the transfer of responsibility for FOD's statutory exemption and approval work, from FOD FSU 1, with effect from 1 January 1998.

2 We have also taken the opportunity to review and update the procedures for dealing with applications for exemptions under COSHH, and this OC sets out the new arrangements.

3 You may copy the ID to applicants to help them submit their application. You should advise applicants that the ID is a guide, and that they should provide comprehensive information in relation to their specific processes and procedures. You may also use the ID as an aid to checking that the company has provided the required information.

## THE MAIN CHANGES

4 FOD FSU 1 relinquished responsibility and involvement with exemptions and approval work from 31 December 1997, and arranged for registers and files to be transferred.

5 FOD Occupational Health and Environment Unit (OHEU) and Chemical and Hazardous Installations Division (CHID) took over COSHH exemption work for premises within their respective enforcement responsibilities, with effect from 1 January 1998.

6 At the same time, the enforcement practice procedures described in GAP 34 were incorporated into the application and approval process.

## THE REVISED PROCEDURES

7 The basic procedure for dealing with all types of exemption was previously given in FOD Code OP Oa. This OC replaces those instructions in relation to exemption work under COSHH.

## COSHH EXEMPTION PROCEDURE

8 In this section, the subparagraph numbers cross-refer to the same stage in the quick-reference flow-chart in Appendix 1.

- (1) Enquiries from applicants are to be directed via the most appropriate route to the field management unit (FMU) with operational responsibility for the

applicant. Any applications received by divisions or directorates other than FOD or CHID should be directed to FOD OHEU or CHID OSU as appropriate.

- (2) The band 2 of the FMU with operational responsibility for the applicant is responsible for ensuring these procedures are followed and may assign an inspector to deal with the application. A COSHH exemption file should be created at this stage to keep all relevant documents together
- (3) The assigned inspector liaises with DST E3 so that jointly a decision can be made (or deferred), on whether a (joint) visit may be necessary, before contacting the applicant requesting the information as set out in the ID, and any other relevant details. The inspector then assembles a full and comprehensive submission from the applicant. This process may include the need for site visit(s). The aim of this process is to ensure that all the required information is obtained.
- (4) The assigned inspector forwards the application to the relevant FOD or CHID FMU band 2, and, for FOD applications, sends a copy to OHEU.
- (5) The FOD or CHID FMU band 2 checks the application for compliance with the ID and confirms that the application is within scope of the COSHH exemption provisions (reg.14).
- (6) The FOD or CHID FMU band 2 forwards the COSHH exemption file to DST E3 with any previous file, and any views on the application.
- (7) DST E3 assesses the occupational hygiene aspects of the application. If further information is needed, DST E3 requests it directly from the applicant. If necessary, visits may be made to the applicant's premises. DST E3 will keep the assigned inspector fully informed about this process. DST E3 will continue to liaise with the applicant and the assigned inspector until all queries are satisfactorily resolved.
- (8) When DST E3 is satisfied with the arrangements for using the prohibited substance it will draw up a draft schedule (in conjunction with the applicant), and pass the file with all papers to FOD OHEU or the CHID FMU band 2. If either FOD OHEU or the CHID FMU band 2 wishes to amend the draft schedule they will consult with DST E3 to arrive at a mutually acceptable version.
- (9) FOD OHEU or the CHID field unit will arrange for the exemption certificate, incorporating the schedule, (examples at Appendices 2 and 3) to be drawn up in final form to be signed by the delegated person, ie OHEU band 1 or relevant CHID unit band 1.

COSHH certificates of exemption are issued for 3 years and are normally printed on "crested" paper (available from FOD OHEU or CHID OSU 6C).

The numbering of certificates from 1 January 1998 should follow the convention:

"Certificate No COSHH/FOD/1998/1" or

"COSHH/CHID Unit No/1998/1"

FOD OHEU and CHID OSU 6C should each maintain their own register and sequentially allocate numbers each year.

The date of signing is normally the commencement date, except when an exemption is being issued prior to the operative date, for example in advance of the renewal date.

(10) FOD OHEU (having retained a copy) and CHID FMU band 2 will each arrange for the signed certificate and schedule to be passed to the assigned inspector for despatch to the applicant with a locally-prepared covering letter (OHEU see Appendix 4). The assigned inspector will distribute additional copy sets (of covering letter, certificate and schedule) for the company file, the local public register, DST E3, HD C; and for CHID units a copy to CHID OSU 6C.

(11) The FOD or CHID FMU will "put away" their file with a "bring-forward" date 6 months before expiry.

When the file is "brought forward" the appropriate FMU should send a letter (Appendix 5) to the applicant (with a copy to the assigned inspector) reminding them of the impending expiry, and of the procedures for re-application. **This is most important** because it allows sufficient time for the application to be considered, and a renewal certificate issued, to run consecutively to the previous one.

9 The appendices provide examples of:

Appendix 1 Quick-reference flow-chart.

Appendix 2 COSHH exemption certificate (for use by FOD and CHID)

Appendix 3 Certificate Schedule

Appendix 4 Letter to inspector responsible for issuing the certificate (for use by FOD OHEU)

Appendix 5 External reminder letter (for use by FOD and CHID)

Appendix 6 Revocation certificate and covering letter.

## GUIDANCE FOR ASSIGNED INSPECTORS CHECKING APPLICATIONS

### **New applications or renewals**

- 10 (1) Most of the COSHH exemptions we deal with are renewal, ie there are relatively few new ones. However, because the passage of time between making an application, obtaining a certificate and it expiring can be 3 to 4 years, each application whether new or renewal is treated as a "new" one. In other words, an applicant must make a **fresh submission**, rather than relying on paperwork which has almost certainly become outdated.
- (2) After the exemption has been granted, employers will need to comply with the requirements of COSHH to prevent or, where not reasonably practicable, to adequately control exposure to the substances covered by the exemption. Carcinogens are specifically covered by the provisions of reg.7(3) and reg.7(9).
- (3) We should adhere to the Citizen's Charter commitment in para 7 of the ID.
- (4) The assigned inspector should ensure that the submission (containing all the relevant information) is forwarded to DST E3 in sufficient time for a proper consideration to be made, queries raised and cleared, and certificate issued, by the required date.

### **Separate exemption issues**

- 11 (1) **Revocations** - Certificates of exemption may be revoked at any time, by way of a revocation certificate. They may be revoked, for example, because:
- (a) a company closes, and another takes over; or
  - (b) of a failure to comply with the exemption certificate conditions, or relevant COSHH Regulation(s).

An example of a revocation certificate is at Appendix 6.

- (2) **General exemptions** - very occasionally a general exemption will be issued (by the HSE lead policy section) and copied to directorates and divisions. FOD OHEU, in conjunction with CHID OSU 6C, should consider for COSHH, the extent of any further dissemination, which should be arranged via FOD SIU 3.

### **Site contacts with applicants**

12 The question of "site contacts" with a client (prior to an application, during an application and after issue of a certificate, including later follow-up visits), is for the inspection group with operational responsibility for the client to decide, taking into account advice from DST E3 and local knowledge as to what might be appropriate.

### **Confidentiality**

13 The example exemption certificate and schedule at Appendices 2 and 3, are currently in force and should be treated as "RESTRICTED - COMMERCIAL". Therefore,

they **must not** be disclosed to a third party. Files should be treated as "RESTRICTED - COMMERCIAL" (HSA Note 52/1994). Information of a sensitive nature held on file should be placed in a sealed envelope, where this is deemed necessary (and may require a "confidential -commercial" marking).

### **Delegated authority**

14 Authority to sign or revoke certificates of exemption is delegated by the Executive (HSE GAP 7) to holders of any post in the Senior Civil Service (ie Band 0 and above). These senior officers may also authorise subordinate staff to perform this function. For the purposes of signing and revoking COSHH certificates of exemption, the following arrangements will apply:

- (1) FOD OHEU - Band 1 Head of OHEU;
- (2) CHID - Band 1 Head of relevant Field Unit.

Subsequent delegation changes will be the responsibility of the respective Band 0 of FOD OHEU or CHID. (You should copy FOD changes to FSU 2.)

### **Enforcement policy - exemptions**

15 The following are considered to be formal enforcement actions:

- (1) any refusal to grant, renew or vary an exemption;
- (2) the imposition of a condition on the granting or renewal; and
- (3) any variation or revocation of an exemption is considered a formal enforcement action

Decisions taken concerning an exemption should therefore be in line with the principles of the HSC's Enforcement Policy Statement (OC 130/1) and "better regulation" (which follows the procedures implementing the Deregulation and Contracting Out Act 1994). Accordingly applicants should be made aware of their rights to make representations should they be unhappy or disagree with a decision made concerning the exemption. HSE GAP 34 sets out the procedures to be followed when dealing with exemptions and when taking related enforcement action. These are summarised in the ID.

16 HSE GAP 34 (at 34.4-34.12) also covers:

- (1) consultation with third parties when considering an exemption; and
- (2) mechanisms for keeping employees informed about decisions to give an exemption, so that HSE inspectors meet their responsibilities under HSW Act s.28(8).

### **Promoting and monitoring consistency**

17 As with all enforcement activity, the arrangements for handling (granting, varying and revoking) COSHH Exemptions should be managed to promote consistency of

approach across HSE, and within Directorates and Divisions. Those responsible for handling COSHH exemptions should monitor the implementation of these instructions, sending any suggested revisions to FOD OHEU and CHID OSU 6C, as appropriate.

### **Further information**

- 18 (1) After 1 January 1998 enquiries should be directed, depending on enforcing authority to:
- (a) FOD OHEU, Edinburgh, Ext 2138;
  - (b) CHID OSU Unit 6C, Room 407B, St Anne's House, Bootle Ext 4823; or
  - (c) DST E3, Room 319, Magdalen House, Bootle, Ext 3620.
- (2) Though these instructions relate to applications for exemption under COSHH, the principles may provide a template for applications under other FOD-enforced regulations.

9 February 1998  
(220/FOD/177/97)  
Disc no: J:\editors\ca1\ocfiles\273\_14.sam\gk

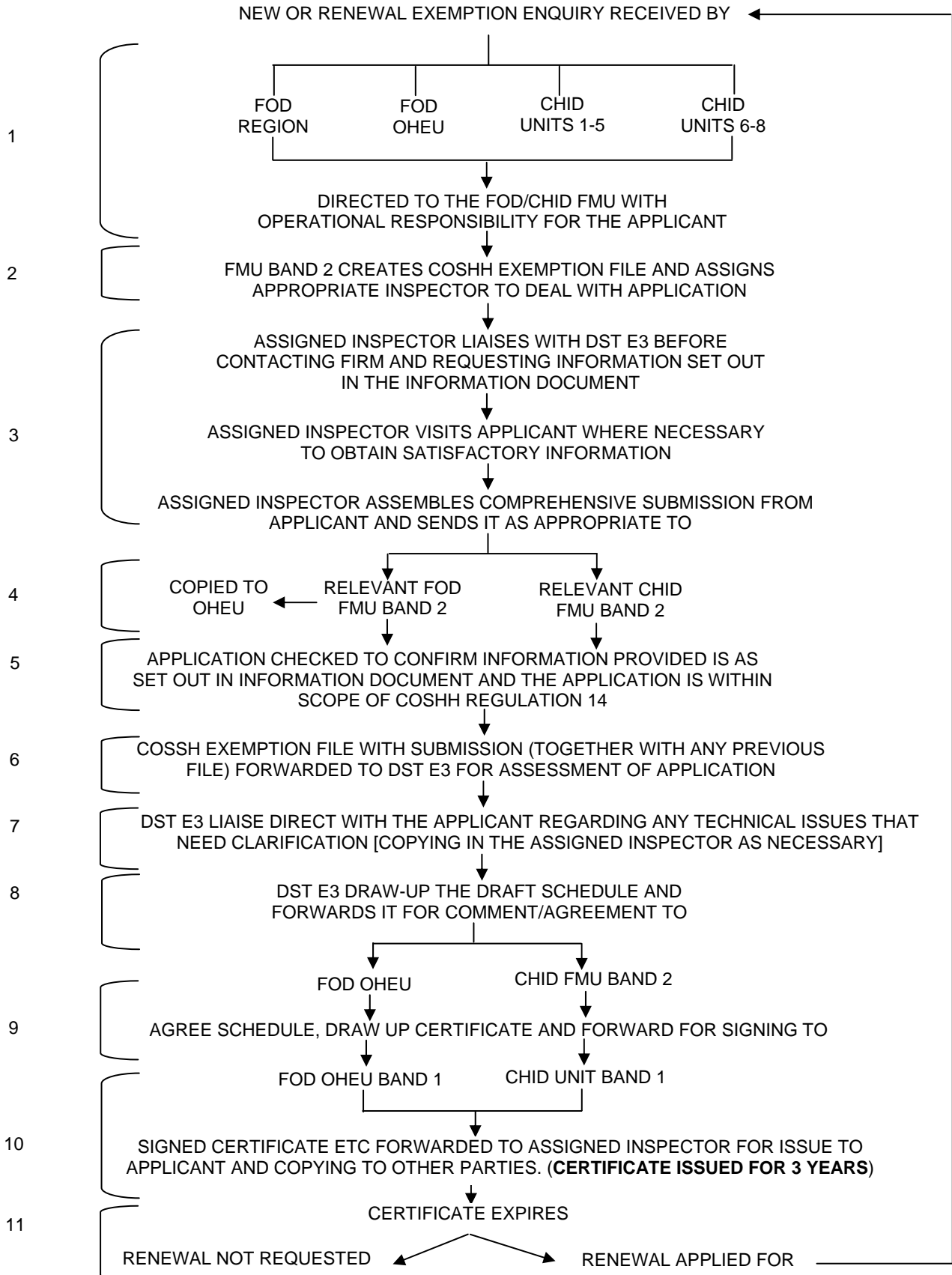
### **ASI headings**

Control of Substances Hazardous to Health Regulations 1994: exemption certificates.

APPENDIX 1  
(para 8)

COSHH EXEMPTION CERTIFICATES

The numbers down the left-hand side of the chart cross-refer to the procedure in para 8 of the OC



APPENDIX 2  
(para 8(9) and 13)



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<sup>1</sup> Exemption 13 – Third party's commercial confidences

APPENDIX 3  
(para 8(9) and 13)



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<sup>2</sup> Exemption 13 – Third party's commercial confidences

APPENDIX 4  
(para 8(10))

**Field Operations Directorate**

Reference FOD/257/96

To: Inspector  
FOD FMU  
Location

**CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH REGULATIONS 1994  
CERTIFICATE OF EXEMPTIONS NO COSHH/1997/2**

1 I forward a certificate of exemption in relation to an application made by XYZ Chemical Company Ltd, Specialities Research Centre, PO Box 92, The Triad, Stanley Road, Bootle, Merseyside L20 7HE which was processed and submitted by [named Inspector, FOD location].

2 The original certificate and schedule and a copy, should be forwarded to the company and they should be invited to study the conditions carefully, noting that it is issued for a period of three years. They should be advised to make a copy available to employee representatives.

3 Please arrange for further copies on white paper:

- (1) One for despatch with the blue crested certificate to the applicant. An acknowledgement of receipt should be requested.
- (2) One for the company file.
- (3) One for the "local" operations manager, and one for an entry in relation to this certificate to be inserted in the register of information available to the public.
- (3) One copy of the certificate and schedule should be sent to DST E3 (M A Stear) and HD C (R A Pedersen).

From:

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FOD OHEU  
EDINBURGH

(NB one copy to be retained by OHEU for reference purposes)

APPENDIX 5  
(para 8(11))

To:

File No

[ ]

Dear Sir/Madam

**CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH REGULATIONS 1994  
EXEMPTION CERTIFICATE No      OF      ; EXPIRING DATE**

I write to advise you that the above Exemption Certificate is shortly to expire.

Please contact                      at this office if you wish to apply for a further exemption under the Control of Substances Hazardous to Health Regulations 1994.

I should be grateful if you would advise me if there is no longer a need for an exemption.

Yours sincerely

From:

Expiring [x ref file: Number ]  
certificate [ Name of Company ]

APPENDIX 6  
(para 11(1))

**HEALTH AND SAFETY AT WORK ETC ACT 1974**

**CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH REGULATIONS 1988**

**CERTIFICATE OF REVOCATION NO COSHH/1991/1/REV**

Under the powers conferred on me by Regulation 14 of the Control of Substances Hazardous to Health Regulations 1988, I hereby revoke the Certificate of Exemption specified in the Schedule to this Certificate.

Date: 22 February 1994

J RENTON

HM Deputy Chief Inspector of  
Factories, an inspector  
appointed by the Health and  
Safety Executive and Safety  
at Work etc Act 1974, and  
duly authorised to act in that  
behalf.

**SCHEDULE**

Special Certificate of Exemption Number 5 of 1991 dated 14 January 1992, signed by  
D G Whomsley, HM Deputy Chief Inspector of Factories.

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<sup>3</sup> Exemption 13 – Third party's commercial confidences

## PROCEDURE FOR DEALING WITH APPLICATIONS FOR EXEMPTION CONCERNING THE PROHIBITED CARCINOGENIC SUBSTANCES

### INTRODUCTION

1 This document contains internal guidance which has been made available to the public. The guidance is considered good practice but is not compulsory. You may find it useful in deciding what you need to do to comply with the law. However, the guidance may not be directly applicable in all circumstances and any queries should be directed to the appropriate enforcing authority. The document also outlines how your application will be handled.

2 Regulation 14 of the Control of Substances Hazardous to Health (COSHH) Regulations 1994 allows the Health and Safety Executive to grant exemptions from the prohibitions relating to the manufacture, importation, use or supply of certain substances, imposed by the requirements of regulation 4 of the COSHH Regulations.

### APPLICATION PROCESS

3 Applications for exemption should be forwarded for consideration to the Health and Safety Executive office with enforcement responsibility for the establishment in question, with sufficient information to provide answers to the following questions:

- (1) Is the substance only to be used for medical or scientific research, investigation, testing or analysis? Please give details of the activities and/or reactions or processes that are involved.
- (2) Is the use certified by the director or other responsible people in charge of the research etc?
- (3) Information provided should include details of:
  - (a) Written procedures including copies of relevant COSHH assessment(s), standard operating procedures and other information to show that there has been an active and adequate consideration of health and safety issues.
  - (b) Working practices that minimise the employee's exposure during the work, including non-routine activities such as cleaning and maintenance of equipment. Operating procedures should be designed to require the minimum of volumes to be used, the minimal transfer and handling of the material. For example, weighing by difference, use of serum bottles etc.

- (c) The necessary precautions and the action to be taken in an emergency, such as failure of the container.
- (d) Safe storage and eventual disposal of the substance.
- (e) Provision of effective control measures, with emphasis on containment, eg that the fume cupboard and any protective clothing, is of a suitable standard. Arrangements for monitoring of exposure.
- (f) The information, instruction, training and supervision required for any person who may be involved in the storage, handling or use of the material.
- (g) An assessment of the need for health surveillance and arrangements made, eg health record, medical surveillance, taking into account the risks and the availability of valid techniques.
- (h) Number of people exposed.
- (i) Arrangements for informing employees [and third parties] and keeping them informed, about decisions to grant an exemption.
- (j) How much is to be imported and used each year, and for how many years? What type of packaging and what volume (or weight) will it be supplied in, eg sealed bottles of 100mls, each containing 0.1g?

4 HSE may consider applications for exemptions to allow work intended to eliminate the substances where present as by-products or waste products, or to allow the substances to be used as intermediates, but the health and safety of those likely to be affected must not be prejudiced.

5 In all other cases, HSE will only issue exemptions where the production and earliest possible use of the substances as intermediates takes place in a single closed system from which the substances may be removed only to the extent necessary to monitor the process or service the system.

6 In considering the application, HSE will address whether the assessment is well made and whether the arrangements are appropriate.

#### WHAT THE APPLICANT CAN EXPECT FROM HSE

7 During the application process HSE will:

- (1) acknowledge applications and keep the applicant informed of progress;
- (2) give the applicant the opportunity of exchanging views if they wish;
- (3) give decisions on applications in writing, including any decision to revoke; refuse; or accept an application, with conditions which are not explicitly stated in the relevant legislation; and

- (4) give information on how to make representations should applicants be unhappy or disagree with a decision made concerning the exemption.