

Summary of submissions

*HAZARDOUS SUBSTANCES
SAFE WORK INSTRUMENT*

October 2018



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Purpose

This document summarises submitter feedback received on the proposed *Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Safe Work Instrument 2018* and next steps related to implementation.

Background

Safe work instruments

Safe work instruments (SWIs) are a tool provided for by section 227 of the Health and Safety at Work Act 2015 (HSWA). They are a type of subordinate instrument (sometimes called tertiary legislation) used to support or complement regulations. SWIs are developed by WorkSafe, and approved by the Minister for Workplace Relations and Safety.

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. SWIs can be made for the purposes of defining terms, prescribing matters, or making other provisions in relation to any activity or thing, including (without limitation) listing standards, substance controls, and competency requirements.

Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Safe Work Instrument 2018

The proposed Safe Work Instrument adds FuelMix to table 3 of schedule 26 of the HSW HS Regulations. This has the effect of excluding FuelMix from the tracking requirements in Part 19 of the HSW HS Regulations.

Consultation on the proposed SWI

The Minister must not approve a SWI unless he is satisfied that all persons and organisations that the Minister thinks appropriate have been consulted, having regard to the subject matter of the proposed safe work instrument.

WorkSafe ran a public consultation on the proposed *Health and Safety at Work (Hazardous Substances – Additional Substances that Do Not Require Tracking) Safe Work Instrument 2018* for four weeks (between 31 July and 24 August 2018).

WorkSafe notified business and social partners (the Council of Trade Unions and Business New Zealand), targeted stakeholders with a particular interest in the subject matter, and 14,000 stakeholders who are subscribed to WorkSafe updates on hazardous substance and consultation via email. The draft SWI was also available to the general public on WorkSafe's website.

The consultation paper requested feedback on adding FuelMix Premixed 2 – stroke fuel (Fuelmix) substance in the list of additional substances that do not require tracking.

What is FuelMix

FuelMix is a commercially produced mixture of unleaded petrol and two stroke oil. Under the Safety at Work (Hazardous Substances) Regulations 2017 (HWS HS Regulations) FuelMix is classified as class 3.1A hazardous substance (flammable liquid). It is intended to be imported and manufactured for commercial and domestic use.

Two-stroke fuel has been used in New Zealand for a long time. However, FuelMix is the first commercially available premixed product. It was approved by the Environmental Protection Authority (EPA) for import, manufacture and use in

May 2018. Two-stroke fuel is commonly used in domestic tools such as lawn mowers, weed trimmers and leaf blowers, as well as commercial tools such as concrete saws, water pumps and generators. Members of the public usually prepare the fuel mixture themselves prior to use.

FuelMix and hazardous substances tracking requirements

Part 19 of the HSW HS Regulations requires that certain hazardous substances are tracked throughout their lifecycle. Hazardous substances that require tracking are described in tables 1 and 2 of Schedule 26, and substances that do not require tracking are described in table 3 of Schedule 26. Regulation 19.3 provides that a relevant SWI may add a hazardous substance to table 3 in Schedule 26.

Class 3.1A hazardous substances are included in table 1 of Schedule 26, meaning that FuelMix is subject to the tracking requirements in Part 19. The requirements for tracking substances include:

- recording information about the location and movement of a tracked substance at each stage of its lifecycle
- records retention, and
- ensuring that a competent person will take responsibility for the tracked substance when it is transferred to another workplace.

If FuelMix is subject to the tracking provisions in the HSW HS Regulations, it would be subject to a disproportionately more restrictive regulatory regime than other similar fuel products that do not require tracking, including the two component ingredients of FuelMix. These requirements would prevent the product being sold to the public as intended.

Submissions summary

WorkSafe received five submissions on the proposed SWI, four submissions were made by businesses and a submission was made by the Motor Trade Association.

All submitters supported the introduction of the proposed SWI. One submitter commented that the “SWI applies a pragmatic approach to managing the sale and storage of commercially prepared small volumes of pre-mixed fuel in a retail environment.”

One submitter suggested that WorkSafe makes available a list of 3.1A, 6.1A and 6.1B products excluded from certain hazardous substances controls. This suggestion has been forwarded to the WorkSafe Guidance and Education team.

Another submitter noted that retailers would need to ensure that they managed their FuelMix stock so that the shelf life wasn't exceeded, and that retailers would need to make customers aware that some machinery requires a different ratio of petrol and two stroke oil.

Outcome of consultation

As all submissions supported the proposed SWI, no changes were made to the draft text. Worksafe is now finalising the SWI.

Implementation

The SWI will be provided to the Minister for Workplace Relations and Safety for the Minister's consideration in October 2018.

Once approved, the SWI will be published on WorkSafe's website.

If approved, the SWI will come into effect on 1 December 2018.

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