

OSHA Issues Comprehensive Proposed Revisions to Hazard Communication Regulations

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Introduction

On September 30, the Occupational Health and Safety Administration (OSHA) published the first major proposed rulemaking of the Obama administration—the long-awaited comprehensive changes to the Hazard Communication Standard, 29 C.F.R. 1910.1200; 1915.1200, 1917.28, 1918.90; and 1926.59 (HCS). The stated aim of the rulemaking is to help promote consistency in the identification, classification, and labeling of chemicals around the world.

While there is general agreement that the adoption of international standards is an important step in the right direction, chemical manufacturers, chemical importers, and downstream users of hazardous chemicals need to pay particular attention the proposed regulatory changes because they (1) may force a reevaluation and reclassification of the *level* of danger posed by dangerous chemicals, and (2) may dictate, often in minute detail, the content of container labels and other materials as they move downstream. Moreover, the new rule would result in significant changes to the procedures by which a chemical is determined to be hazardous by eliminating (1) the current “floor” of chemicals considered to be hazardous and (2) the toxicological study basis for finding that a chemical is hazardous, and by adding an “unclassified” hazard category. Other significant changes employers should pay attention to include training costs and expenses associated with the new rules, and their potential adverse impact on small entities and employers.

We expect the comment period, which expires on December 29, to be an active one, and encourage companies and organizations to consider submitting comments to address any issues that are significant to their businesses.

History of the HCS

The HCS was promulgated in 1983 to ensure, among other things, that chemical manufacturers and importers evaluate and control chemical hazards as the materials move to downstream users. The HCS requires chemical manufacturers and importers to do the following:

- Determine if any of the chemicals they produce are dangerous chemicals by reviewing available scientific evidence concerning the physical and health hazards associated with the chemicals
- Develop for every chemical found to be dangerous a container label and Material Safety Data Sheet (MSDS) to provide information about those hazards to all downstream users of the chemical

In addition, all employers with employees exposed to the hazardous chemicals (including manufacturers, importers, and downstream employers) must develop a hazard communication program, and ensure that employees have access to container labels, MSDSs, and training on hazardous substances in their workplace.

The HCS applies, however, only within the United States. Other countries developed similar standards, labels, and MSDSs that were not uniform, creating a major compliance burden for businesses operating internationally. For that reason, in 1992, the United Nations (UN) Conference on Environment and Development called for the development of a globally harmonized chemical classification and labeling system. Later that year, the UN adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), with a 2008 goal for implementation.

The proposed regulatory changes to the HCS incorporate many of the GHS's requirements, bringing the U.S. standard more in line with the international community. It is important to note, however, that the GHS has not been adopted "wholesale." OSHA added regulations, for example, to address previously unclassified dangers—such as combustible dust—while at the same time declining to adopt other GHS classifications of danger.

New Terms and Definitions

Definition of "Chemical"

OSHA declines in its proposal to remove the terminology "chemical" to match the GHS, which instead uses the terms "substance" and "mixture." The HCS will continue to define "chemical" to include elements, chemical compounds, and mixtures of elements and/or compounds. Although the proposal makes small changes to the terms "substance" and "mixture" to acknowledge the GHS's use of those terms, OSHA explains that those technical revisions do not alter the meaning of those terms.

"Floor" of Chemicals/Universal One Study Rule

The current HCS includes established procedures by which employers and other entities can currently evaluate and determine under a performance-oriented system whether or not the chemical in question is hazardous, including (1) relying on an established "floor" of chemicals determined to be hazardous based on referenced lists, or (2) a finding that the chemical is hazardous being triggered by the existence of one toxicological study concluding a possible adverse health effect. The proposal departs from this established practice in several important respects. The proposal eliminates both the recognized "floor" of chemicals already determined to be hazardous, as well as the ability of the existence of one study to trigger a hazard finding. These procedures are replaced by specific and detailed criteria for every health hazard in an effort to provide a guide for the evaluation of relevant data to determine classification. The proposal is a significant change from the existing mechanisms and could result in changes to the present hazard classification of common chemicals.

“Unclassified” Hazards

The current HCS defines specific harms, such as toxicity or combustibility, and regulates each harm according to its specific traits. The proposed regulations continue in that tradition—with one important exception. The proposed regulations recognize that the regulations themselves cannot define every type of hazard, and that there will be situations in which the classifier has identified evidence of a hazard, but the evidence does not meet the currently specified criteria for hazards covered by the rule. OSHA, therefore, added to the regulations coverage for “unclassified” hazards—and requires within the proposal that organizations treat chemicals exhibiting those “unclassified” dangers as hazardous chemicals under the rule. This significantly broadens the existing HCS—and expands coverage beyond international standards. OSHA specifically cites both combustible dust and simple asphyxiates as examples of chemicals with “unclassified” hazards (although elsewhere in the regulations, OSHA also states that current HCS regulations do cover combustible dust).

Moving from Hazard Determination to Severity Classification

Under the existing HCS, chemical manufacturers and importers are required to evaluate the scientific data available regarding the chemicals they produce or import, and to determine whether they are hazardous within the meaning of the standard. That inquiry, however, yields only a determination that a chemical is or is not hazardous.

The proposed rule adds a second layer to the inquiry, requiring chemical manufacturers and importers to not only identify a hazard, but to also classify the severity of that hazard. This inquiry must be made with reference to two appendices to the HCS—Appendix A for Health Hazards and Appendix B for Physical Hazards—that delineate, in specific detail, the different classes of hazard in a particular range. For example, carcinogenic chemicals would have the following classifications:

- **Category 1:** Known or presumed human carcinogen.
- **Category 1A:** Known to have carcinogenic potential for humans. Classification in this category is largely based on human evidence.
- **Category 1B:** Presumed to have carcinogenic potential for humans. Classification in this category is largely based on animal evidence.
- **Category 2:** Suspected human carcinogen.

The proposal also reemphasizes that the classification procedures must be followed for mixtures as well as individual chemicals. The Appendices provide classification criteria for mixtures.

Other Classification Proposals

In addition, the proposed rule also does the following:

- Allows employers to continue to rely on supplier information when making hazard determinations.
- Reemphasizes that the evaluator must take into account the “full range” of scientific evidence concerning potential hazards.

- Continues the existing rule that there is no requirement to test a chemical to classify its hazard. The proposal states directly that “[t]he GHS does not require testing, and neither does the HCS. Both are based on available data. This has always been the case for the HCS, and is now explicitly addressed in the revised text to ensure it is understood by all stakeholders.”

Label Requirements

HCS labels provide workers with a brief, visual hazard summary at the worksite where the chemical is used. Current regulations require that the label include the identity of the chemical, the specific physical and health hazards, including target organ effects, and the name and address of the manufacturer, importer, or other responsible party. There is no required standard format or design for the labels.

To increase the effectiveness of these labels, OSHA is proposing a new requirement that labels include four standardized elements—a signal word, a hazard statement, a pictogram, and precautionary statements—that the agency believes better convey critically important information chemical hazards. Appendix C of the proposal specifies the information needed for each hazard class and category.









Signal Words

Current HCS regulations are silent as to the use of signal words that typically appear at the top of a label to alert the user to a hazard and to indicate a particular level of hazard, such as “DANGER” or “CAUTION.” OSHA proposes to require signal words, but limit labels to the use of only one of two words: “DANGER,” to indicate more severe hazards, and “WARNING,” to indicate a less serious hazard.

Pictograms

Current HCS regulations do not require that container labels contain any “pictograms,” i.e., graphic representation of hazard levels. Under the proposal, labels would be required to have one or more of eight different, standard pictograms that consist of different black symbols on white backgrounds within a red frame square, as follows:

Figure C.1 – Hazard Symbols and Classes

Flame	Flame Over Circle	Exclamation Mark	Exploding Bomb
 Flammables Self Reactives Pyrophorics Self-heating Emits Flammable Gas Organic Peroxides	 Oxidizers	 Irritant Dermal Sensitizer Acute Toxicity (harmful) Narcotic Effects Respiratory Tract Irritation	 Explosives Self Reactives Organic Peroxides
Corrosion	Gas Cylinder	Health Hazard	Skull and Crossbones
 Corrosives	 Gases Under Pressure	 Carcinogen Respiratory Sensitizer Reproductive Toxicity Target Organ Toxicity Mutagenicity Aspiration Toxicity	 Acute Toxicity (severe)

Hazard and Precautionary Statement

The HCS currently includes a simple requirement for “appropriate warning labels” on dangerous chemicals. The proposed rule would require specific hazard statements on labels, based on the hazard classification of the chemical. These statements are specifically identified in the appendix, and include simple statements such as “Toxic in contact with skin” or “Fatal if swallowed,” or “Harmful if inhaled.”

Labels on Unclassified Hazards

As described above, the proposal includes coverage for “unclassified” hazards. OSHA’s proposal acknowledges, however, that there are no harmonized labeling elements available for unclassified hazards (citing by way of example combustible dust and simple asphyxiates). Accordingly, the proposal requires that (1) hazard information must appear on the MSDS and (2) the responsible party must determine what is appropriate for the label.

Material Safety Data Sheets

The current HCS requires chemical manufacturers and importers to develop an MSDS for each hazardous chemical they produce or import. MSDSs must include the identity of the chemical used on the label, the chemical and common names of hazardous ingredients, the primary route of entry, exposure limits, generally applicable precautions, emergency and first aid procedures, the date of the preparation of the MSDS, and the name, address, and telephone number of the party preparing the MSDS. There is no format requirement, nor is the information required to be presented in any particular order, although a number of organizations have developed a voluntary form to meet GHS requirements.

OSHA's proposal would require the MSDS to be prepared in a standard 16-paragraph format (of which four paragraphs are optional), similar to those now in voluntary use. The sections include (with optional sections in italics):

- Section 1: Identification
- Section 2: Hazard(s) Identification
- Section 3: Composition/Information on Ingredients
- Section 4: First-Aid Measures
- Section 5: Fire-Fighting Measures
- Section 6: Accidental Release Measures
- Section 7: Handling and Storage
- Section 8: Exposure Controls/Personal Protection
- Section 9: Physical and Chemical Properties
- Section 10: Stability and Reactivity
- Section 11: Toxicological Information
- *Section 12: Ecological Information*
- *Section 13: Disposal Consideration*
- *Section 14: Transport Information*
- *Section 15: Regulatory Information*
- Section 16: Other Information(including date of last revision)

It is important to note that OSHA declined to address concerns that MSDSs contain inaccurate or incomplete information.

Training

The proposed rule includes relatively minor revisions to the current HCS training requirement, intended to ensure that employers train employees to read and recognize the new label and MSDS requirements. Training would be required within two years after the adoption of the final rule.

Combustible Dust

Despite significant lobbying, OSHA declined in its proposal to add a specific definition for "combustible dust," explaining that "[i]t has been the longstanding position of the Agency that the hazard determination covers dusts known to be subject to deflagration and subsequent explosion."

OSHA concludes that combustible dust would be covered by the new proposal under the added definition of “unclassified hazards” (see above).

Effective Date

OSHA is proposing to require implementation of the revisions to HCS within three years after the rule is complete.

Conclusion

The proposed regulatory changes will have an important impact on chemical manufacturers and importers, and will force a far-reaching reclassification of hazardous chemicals. Changes for chemical end-users would be more limited, but will require, at a minimum, that employers integrate the new changes into their hazard communication program, assuring that employees understand the pictograms and other information proposed to be required on labels and in MSDSs.

We welcome the opportunity to discuss these proposed changes with you, and we encourage employers to consider submitting comments to address any issues that are significant to their operations. If there is sufficient client interest, we plan to assemble a coalition of client companies and submit comments on these proposed regulations by the end of the comment period. Please contact Howard Radzely or Jonathan Snare if your organization is interested in participating.

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