

OSHA REVISES CHEMICAL HAZARD COMMUNICATION STANDARD

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OSHA has revised its Chemical Hazard Communication Standard (HCS) effective May 25, 2012. With the revision, OSHA aligned the HCS with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The revised HCS adopted many components of the GHS. OSHA estimates that over 43 million workers who produce or handle hazardous chemicals in more than 5 million workplaces across the country will be covered by the revised HCS, and that 500 workplace injuries and illness and 43 fatalities will be prevented annually.

OSHA revised the HCS for two reasons: update the HCS to ensure that the hazards of chemicals produced or imported are classified with the information transmitted to employers and employees; and, align the HCS with the GHS to produce consistency in transferring chemical information within the United States and other countries. The multiple national and international regulations on chemical hazard communication burden manufacturers, importers, distributors and employers. To address this issue, the revised HCS is consistent with the GHS. Primary components of the revised HCS are:

Hazard Classification

Chemical manufacturers and importers must classify the hazards of substances they produce by determining the hazard class and category (if applicable) that apply to the chemical. The hazard classification must be based on all relevant available information, including current safety data sheets (SDS). The new HCS does not require actual testing. SDS should be provided for the mixture as a whole, although a hazard determination can be made by evaluating components. There are two primary hazard classification categories: "physical" and "health." Each hazard class is subdivided into a hazard category based on severity. An increase in hazard category number indicates a decrease in severity. Determinations by the International Agency for Research on Cancer (IARC) and the National Toxicology Program (NTP) are used to establish whether a chemical is a carcinogen or potential carcinogen. Only one positive statistically significant finding is necessary for the carcinogenic potential of that substance to be noted on an SDS.

Hazard Communication Labeling

The chemical manufacturer, importer or distributor must properly label each container of hazardous chemicals leaving the workplace. Labels for hazardous substances must have: a product identifier; a signal word; hazard statements; pictograms; precautionary statements; and the name and address of the manufacturer, importer or distributor. The employer must ensure that each container is labeled in the workplace.

SDS

Previously, HCS used the phrase "material safety data sheets" or "MSDS." The term has been changed to SDS under the revised HCS standard. The revised HCS standard mandates a 16-section format, but OSHA does not enforce sections 12 through 15 because they are outside the scope of OSHA's regulatory jurisdiction. All data should be completed as specified in the format criteria, including headings. The American Conference of Governmental Industrial Hygienist's Threshold Limit Values and IARC's and NTP's carcinogenicity classifications are required to be provided in the SDS. SDS must be readily accessible to all employees. SDSs must also be updated within three months of when new information becomes known about the chemical.

Training

OSHA requires all employees to be trained on the new labeling and SDS requirements by December 1, 2013. The revised HCS requires employees to be familiar with the new label, SDS formats and presentation of information.

Written Chemical Hazard Communication Program

Similar to the previous HCS, the revised HCS requires employers to develop, implement and maintain at each workplace a written chemical hazard communication program which describes how the labeling, SDS and training requirements will be met.

Trade Secrets

Several elements of the revised HCS regarding trade secrets were carried over from the previous HCS standard. One substantial change is that manufacturers are allowed to claim the percentage composition of a mixture as confidential on the SDS.

Implementation Schedule

Implementation of the revised GHS will be phased in as follows:

- By December 1, 2013 employees are to be trained on the new label elements and SDS format.
- By June 1, 2015 chemical manufacturers, importers and distributors must fully comply with the new HCS; however distributors can ship containers labeled by manufacturers under the old system.
- After December 1, 2015, distributors must follow the required labeling requirements under the revised HCS.
- By June 1, 2016, employers must fully comply with the revised HCS standard.

Going Forward

Although many countries have already adopted the GHS standard, others have not. Additionally, there may be differences between countries in implementing parts of the GHS, such as in hazard classification and labeling. For example, for a flammable liquid OSHA's revised HCS has a category 4 chemical; the European group did not adopt such a category. There are other differences regarding labeling and confidentiality between the United States, Europe and China. The new HCS has a wide range of changes that make it more compatible with the GHS, including, but not limited to: hazard classification; labeling; SDS; training; written programs; and trade secrets. We will continue to update you as new OSHA regulatory developments occur. In the meantime, your Reinhart attorney or members of Reinhart's Labor and Employment Law practice group will be pleased to answer your questions and address any concerns that you may have regarding OSHA's compliance and enforcement efforts.