

OSHA FURTHERS U.S. ADOPTION OF GLOBALLY HARMONIZED SYSTEM OF CHEMICALS CLASSIFICATION THROUGH RECENT RULEMAKING

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The classification and labeling of chemicals in commerce is regarded by many as an important tool in limiting risks associated with hazardous chemicals. In one view, the effectiveness of international classification and labeling requirements has been impeded by the diversity and inconsistency of such requirements in various jurisdictions across the globe. To eliminate this inconsistency, the United Nations (UN) developed the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) in 2002. The GHS (including its subsequent revisions) was not implemented through a multinational treaty. Instead, it serves as guidance intended to be incorporated into law by individual nations. The goal of the GHS is for nations to adopt substantially similar classification and labeling standards, which would both grease the wheels of international commerce and provide for internationally consistent and comprehensible chemical labeling.

In the United States, the federal Occupational Safety and Health Administration (OSHA) recently undertook a major update of the Hazard Communication Standard (HCS), 29 C.F.R. § 1910.1200. An important aim of the new HCS is to conform the U.S. OSHA requirements with the GHS. This is the first major overhaul of the HCS since 1994. The new regulation became effective May 25, 2012, although implementation dates are staggered to give companies time to plan for and comply with the changes. The OSHA regulations (along with regulations already adopted by the U.S. Department of Transportation (DOT)) begin to align U.S. regulations with UN GHS goals, but additional agencies (including potentially the U.S. Environmental Protection Agency (EPA) and the Consumer Products Safety Commission) must adopt GHS compliance requirements for these goals to be fully realized in U.S. law. The following paragraphs highlight major elements of the OSHA regulatory revisions.

Consistent Labels and New ‘SDS’

One of the main purposes of the revised HCS is to make chemical hazard information easier for workers to understand. In the past, chemical manufacturers and importers were given leeway in drafting “appropriate” labels and data sheets. As a result, similar chemicals and products from different sources would often bear different labels or warnings.

The new 2012 HCS offers a more uniform approach to hazard classification and labeling. It also provides the format for a new safety data sheet (SDS) (formerly called a material safety data sheet or MSDS). Employers must train their employees on the new labeling and SDS formats. OSHA has provided a useful side-by-side comparison of the changes to the new HCS. It is available at <http://www.osha.gov/dsg/hazcom/side-by-side.html>.

Hazard Classification

The system for classifying chemicals according to their hazards has been changed in the new HCS. The 1994 HCS had a more performance-oriented approach. The new 2012 HCS establishes a detailed classification of chemical hazards based on physical and health risks.

Under the new 2012 HCS, a chemical characterized as any of following is categorized as a “Physical Hazard”—explosive; flammable (gases, aerosols, liquids, or solids); an oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; an organic peroxide; corrosive to metal; gas under pressure; or when in contact with water, emits flammable gas.

A chemical associated with any of the following characteristics is categorized as a “Health Hazard”—acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); or aspiration hazard.

The 2012 HCS also creates a new hazard category entitled “hazards not otherwise classified” (HNOC),

which replaces the former “unclassified hazards” category. Under the new HNOG category, employers must provide information regarding chemicals with adverse physical or health effects that are identified during the evaluation of scientific evidence, even if the chemicals do not fall under an existing hazard class. In addition, combustible dusts now have their own hazard class, although the term has yet to be defined. Combustible dust hazards may result from many non-chemical materials in the workplace, and thus identifying hazards may present challenges.

Labeling

Shipping labels are a key source of information about chemical hazards. Under the HCS, chemical manufacturers, importers, and distributors are responsible for labeling each container of hazardous chemicals leaving the workplace. The new 2012 HCS standardizes the required labeling and incorporates uniform international GHS signal words, hazard statements, and symbols. OSHA now requires that labels on shipped containers include:

- Product identifier providing the name or number of the chemical;
- Signal word providing chemical elements and compounds;
- Hazard statement describing the nature of the hazard;
- Symbols (hazard pictogram) specific to the product’s hazard category;
- Precautionary statement describing recommended measures to minimize adverse effects resulting from exposure; and
- Supplier information identifying the chemical manufacturer, importer or other responsible party.

Safety Data Sheets

The new 2012 HCS provides for standardized SDS, which will contain 16 sections in a set sequence. The new SDS contains more information than in the previous MSDS. OSHA anticipates that the new format will make information easier to locate. Another change is that OSHA has published a mandatory

Appendix D, which details the information that must be included under each heading, making the SDS a more rigorous format than the older MSDS. Under the 2012 HCS, the SDS must include the following categories of information—(1) identification; (2) hazard identification; (3) composition/information on ingredients; (4) first-aid measures; (5) fire-fighting measures; (6) accidental release measures; (7) handling and storage; (8) exposure controls/personal protection; (9) physical and chemical properties; (10) stability and reactivity; (11) toxicological information; (12) ecological information; (13) disposal considerations; (14) transport information; (15) regulatory information; and (16) other information, including date of preparation or last revision.

OSHA has formally stated that it will not enforce the information requirements of Sections 12-15 as these are outside its jurisdiction. Other agencies enforce these requirements through different statutes. For example, Section 13 (Disposal) is regulated by EPA under the Resource Conservation and Recovery Act (RCRA) statute, and Section 14 (Transport) is regulated by DOT.

Phased-In Compliance Deadlines

Recognizing the significant work that will be required of chemical manufacturers, importers, distributors, and employers, OSHA has adopted a phased approach to compliance. During the transition period to the final compliance dates, responsible parties may comply with either the new HCS, the current standard, or both.

- By December 1, 2013, employers must train employees on the new label elements and SDS format.
- By June 1, 2015, chemical manufacturers, importers, distributors, and employers must comply with all modified provisions of the final rule, except that by December 1, 2015, distributors will be prohibited from shipping containers with labels that do not satisfy the new requirements.
- By June 1, 2016, employers must update alternative workplace labeling and hazard communication programs as necessary, and

must provide additional employee training for newly identified physical or health hazards.

Judicial Challenges

Several industry groups have challenged the OSHA rulemaking through a number of petitions for review filed with the U.S. Court of Appeals for the District of Columbia Circuit. Although the petitioners have yet to articulate the bases for their challenges, they have hinted at potential bases in correspondence with media and in past meetings with the White House Office of Management and Budget.

Some industry groups are worried that updated regulations may actually create inconsistent labeling requirements. One specific concern relates to pesticides, which are also governed by labeling

requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Similarly, other groups have expressed that the regulations are not aligned enough with GHS, in particular with respect to requirements for when mixtures that contain toxic compounds must be classified as hazardous. Other groups are concerned with the regulation of combustible dusts and the compliance deadlines. The success of these challenges may affect the ultimate content of the rules.

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