

LEGAL UPDATES

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Globally Harmonizing the System: Changes to the OSHA Hazard Communication Standard

According to Secretary of Labor Hilda L. Solis, "[e]xposure to hazardous chemicals is one of the most serious dangers facing American workers today."

In part to address this concern, on March 26, 2012, the Occupational Safety & Health Administration (OSHA) promulgated a final rule that amended the Hazard Communication Standard. The amended rule is aimed at improving safety protections for American workers and brings the United States into conformity with foreign nations under a new regulatory system referred to as the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). China, Japan, Canada, the European Union and Australia are also currently implementing the GHS. In the United States, the new requirements will be phased in over the next few years.

The original Hazard Communication Standard (HCS) was promulgated in 1983 and required that chemical manufacturers and importers evaluate the chemicals they produce or import and provide hazard information through labels and safety data sheets. The standard was designed to give American workers a "right to know" what potential safety and health hazards were posed by the chemicals they handled.

Adopted by the United Nations in 2002, the new GHS is the result of an international collaborative effort by governments, industry and labor to improve the quality and consistency of hazard classification, labels and safety data. **At bottom, the GHS provides a single set of harmonized criteria for classifying chemicals according to their health and physical hazards.** The new GHS was proposed in the United States in September 2009 and vetted in public hearings in March 2010 before being

promulgated in its final form at the end of last month. As usual, the effective date of the final rule is 60 days after the date of publication.

Like the original rule, the GHS is meant to reduce on-the-job injuries and illnesses and is expected to prevent up to 500 additional injuries and up to 43 additional workplace fatalities each year, as well as improve trade conditions for industry. Importantly, the GHS does not change the framework of the HCS but instead tightens and standardizes classification and labeling criteria to offer workers a more comprehensive “right to understand” the potential chemical hazards they face on the job.

How Does this Change the HCS?

The HCS was a performance-oriented approach designed to provide parameters for evaluation of chemical substances, but not specific, detailed criteria. The new GHS, by contrast, does contain specific criteria for each health and physical hazard, along with detailed instructions for hazard evaluation and determinations as to whether mixtures or substances are covered.

In addition, the GHS establishes both hazard classes and hazard categories -- classes are divided into categories that reflect the relative severity of the effect. This approach provides additional information to determine the appropriate response to address the hazard.

And, some of the terminology of the HCS has been changed to conform with international standards. For example, "hazard determination" has been changed to "hazard classification" and "material safety data sheet" was changed to "safety data sheet."

There are four broad categories of changes that businesses should be aware of:

Manufacturers and importers must now classify chemical mixtures, and they must comply with more specific criteria for other hazards classification, as outlined in 40 C.F.R. §1910.1200.

Chemical manufacturers must include one of nine new, international labels on their products that indicate, for each hazard class: (1) an internationally harmonized signal word; (2) a pictogram of the hazard on a white background framed by a red border; (3) a hazard statement; and (4) a precautionary statement.

OSHA has designed a new, standardized format for safety data sheets. The sheets will have 16 specific sections designed to ensure consistency across industries and nations.

Employers must train their workers in the new label and data sheet requirements by December 1, 2013. The reason OSHA is requiring that employees be trained so early is that other countries are in various stages of implementing the new standard, and OSHA wants American workers to be familiar with the new labels and safety data sheet formats sooner rather than later.

For a side-by-side comparison of the old and updated rules, please visit:
<http://www.osha.gov/dsg/hazcom/side-by-side.html>.

What Are the Benefits of the New Rule?

Besides the reduction in workplace injuries and deaths, the federal government promises several other benefits of the new GHS, namely:

Improvement of workplace communication through standardization and simplification of information, safety data sheets and training.

Reduction in workplace confusion, especially for low-literacy workers.

Safer handling and use of chemicals due to more efficient access to information and safety data sheets.

Cost savings for industry because of less frequent data sheet and label updates.

Cost savings for industry because of reduced trade barriers.

Cost savings for industry due to increased productivity.

However, perhaps the biggest benefit of the new system is its overriding purpose: assuring consistency of communicating hazards with foreign nations. As industry is aware, there is currently a major compliance burden for international manufacturers, importers and distributors because multiple labels and safety data sheets must often be developed for the same product when shipped to different countries. This will no longer be the case after the new GHS is phased in.

As Secretary Solis stated in a press release last month:

“Revising OSHA's Hazard Communication Standard will improve the quality, consistency and clarity of hazard information that workers receive, making it safer for workers to do their jobs and easier for employers to stay competitive in the global marketplace.”

That, coupled with the cost-savings promised by OSHA as a result of the updated regulation, is something industry can certainly support.

What This Means to You

In addition to the **December 1, 2013**, deadline for GHS training mentioned above, there are several other deadlines of which businesses should be aware:

Chemical manufacturers, importers, distributors and employers must be in compliance with all aspects of the updated rule by **June 1, 2015**. This includes the pictographs and other new labeling requirements and the new format for safety data sheets.

Distributors may ship products with “old” labels until **December 1, 2015**.

Employers must update alternative workplace labeling and provide additional training for new physical or health hazards by **June 1, 2016**.

Finally, after **June 15, 2015**, chemical manufacturers, importers, distributors or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical **within six months** of becoming aware of the new information. If the chemical is not currently produced or imported, the new information should be added to the label before the chemical is introduced into the workplace again.

Importantly, during the transition period, all manufacturers, importers, distributors and employers may comply with the old standard, the new standard or parts of both. Related expenditures on the part of industry should be limited to one time transition costs as the new system is phased in over the next three years.

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