

Manufacturers Should Prepare for OSHA's New and Altered Proposed Hazard Communication Requirements

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Manufacturers, suppliers, distributors, and importers have often struggled with communicating product hazards to downstream employees and users, due to complex hazard communication requirements in international standards, as well as federal and state law. The Occupational Safety and Health Administration (OSHA) has [announced](#) proposed amendments to the Hazard Communication Standard (HCS) in [29 CFR 1910.1200](#) to further align it with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS), which provides guidance on international standards for management of chemical hazards. Manufacturers, importers, and employers whose employees may be exposed to hazardous chemicals in the workplace should consider commenting on the proposal because the proposed amendments to the HCS have broad implications.

OSHA's [notice of proposed rulemaking](#) asks interested parties to submit comments on the proposed changes by *April 19, 2021*. If requests for a hearing are submitted, OSHA will schedule an informal public hearing for testimony on the effect of the proposed rule and introduce evidence on the rule's potential impact.

Background: 2012 Changes

OSHA last amended the HCS in 2012 to align the standard with the GHS and to create consistency with other countries in chemical hazard classification, labeling, and communication. Before 2012, the HCS required manufacturers, importers, and employers to evaluate the chemicals they produced, imported, and used for possible hazards and communicate hazard information to downstream workers using container labeling and safety data sheets (SDSs). To protect employees from chemical hazards, employers also must have written hazard communication programs and employee training. These measures, however, were not consistently done because of varying international, federal, and state laws regulating hazardous chemical identification, classification, and hazard communication. As a result, many employers, particularly manufacturers and suppliers, had difficulty complying with the standard. Manufacturers' varying approach to hazard classification and communication also occasionally led to downstream user and worker confusion on chemical hazards.

In amending the HCS in 2012, OSHA's primary goal was to ensure workers received consistent and accurate information on workplace chemicals. A second goal was to ensure effective and consistent hazard communication between manufacturers, suppliers, and employers. This, in turn, required uniformity in the methods used to identify, classify, and communicate chemical hazards (*e.g.*, labeling and SDS pictograms and signal words). It also required major changes in how manufacturers, suppliers, importers, and distributors evaluated chemical hazards and noted hazard information on product SDSs. Some employers also had to implement substantial revisions to their hazard communication programs and training materials to ensure employees understood SDS and label elements. Consequently, OSHA's 2012 broad overhaul of the HCS took time to implement. The revised

HCS, in fact, was not fully implemented until [June 1, 2016](#), and many employers faced challenges in meeting the compliance deadlines established in that standard.

The 2012 amendments only aligned the HCS with Revision 3 of the GHS ([77 FR 17574](#)). The United Nations, however, has published revised editions of the GHS every two years since 2002. As the GHS is on [Revision 8](#), the current HCS is out-of-date with international standards. To bring the HCS up-to-date, or closer to it, OSHA's proposed rulemaking, if enacted, would align the HCS with Revision 7 of the GHS and select provisions of Revision 8. OSHA's proposal would change how employers must label some chemical products in the workplace. The revisions also would alter some requirements for SDS content, including chemical information that may be confidential business information or trade secret.

Proposed Changes in Hazard Classifications

One major amendment proposed is to revise criteria for the classification of certain health and physical hazards, including unstable gases, non-flammable aerosols, skin corrosion, or irritation, eye irritation, and aerosols, generally. The proposed amendments would also create a new hazard class for desensitized explosives. Under these changes, certain non-hazardous products, classed under the 2012 HCS amendments, may need to be identified as hazardous or managed in a different hazard class. They also may need to have revised labeling and SDSs. Employers handling and using aerosol products may find themselves having to comply with HCS requirements where previously they did not. Further, manufacturers, importers, and suppliers of aerosols, desensitized explosives, and flammable gases will need to reevaluate their products and ensure proper classification, identification, labeling and communication of product hazards.

Labels and SDS Content

The proposed HCS amendments would not change existing requirements for hazards to be communicated to downstream users and workers through labeling and SDSs, but they would require SDS and labeling revisions in some cases. For example, proposed new warning language and precautionary statements aim to help clarify chemical hazards to workers. Some language proposed appears to be stylistic changes. For example, the precautionary statement "during pregnancy and while nursing" would replace "during pregnancy/while nursing." But the effect of this change is significant in that now both the scenario of pregnancy and nursing must appear on the product label and SDS where before only one may have been present. Other proposed changes introduce new statements for hazard classes and categories. OSHA has more proposed new precautionary pictograms and mandatory language. Even though the proposed changes would require many chemical manufacturers, importers, and suppliers to substantially revise and update certain products' SDSs and labels, OSHA maintains the proposed revisions will be easy to implement. Indeed, OSHA suggests that employers can make required changes consistent with the HCS's existing requirement to update SDSs and labels whenever new information is available and within three months and six months, respectively.

Cooperation with International Trading Partners and Federal Agencies

A key goal in OSHA's proposed amendments is to facilitate cooperation with international trading partners and federal agencies. This is particularly relevant to chemical manufacturers, suppliers, importers, and distributors that operate internationally, in that having consistent use of GHS across countries can reduce inconsistencies in chemical management compliance obligations.

OSHA's attempts to harmonize its procedures with other federal agencies is refreshing. In fact, the proposed amendments consider how many regulatory frameworks a product may be subject to and seek alignment in imposed obligations. Chemical hazards may, for instance, be subject to requirements imposed by OSHA, the Department of State, the Department of Transportation (DOT), the Environmental Protection Agency (EPA), the U.S. Coast Guard, the Consumer Product Safety Commission, the Department of Energy, the Department of Defense, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Along with leading an U.S. Interagency GHS Coordinating Group and working with representatives of these other federal agencies, OSHA also is actively collaborating with EPA to address health hazards from chemicals consistently. EPA has even proposed changes to its regulations on significant new uses of chemical substances under the Toxic Substances Control Act to align with the HCS and the GHS ([81 FR 49598](#)).

OSHA's proposed amendments would also provide flexibility in labeling when the product is already labeled for shipment consistent with DOT regulations. For instance, new HCS language would address requirements for bulk shipments that allows labels to be placed on the immediate container or transmitted with shipping papers, bills of lading, or electronically. This would ensure hazard information is available immediately to workers on receiving the shipment of hazardous chemical products but allows for different approaches in how hazard communication is achieved. The proposed amendments would also allow for use of a DOT required pictogram on the label of a shipped container, without requiring additional placement of the HCS pictogram for the same hazard.

Unique Circumstances

OSHA's proposed amendments aim to make the standard more effective in certain unique circumstances. OSHA specifically included proposed HCS amendments on labeling of small containers and relabeling of chemicals for shipment. Labeling of small containers has been of significant interest to the regulated community for some time. Many manufacturers and distributors reported in past public meetings that they could not comply with the 2012 HCS's labeling requirements for small containers. Though OSHA has tried to address these issues in several letters of interpretation, the proposed amendments would explicitly address how containers should be labeled when the label is too small to note all required safety information.

Further, OSHA has proposed changes to the requirements for relabeling of chemicals that have a long or complex distribution chain. Complex distribution chains include, for example, products that are manufactured and then shipped to a distributor where they are then held for a long time before distribution to an end user. Another example is product returns from downstream users that are then shipped from the distributor to other customers. In effect, OSHA's proposed amendments eliminate relabeling in these scenarios, provided the products are labeled and hazards are effectively communicated.

OSHA has even more proposed two key changes to the HCS on trade secrets and proprietary information. OSHA does not currently allow manufacturers to claim concentration ranges as trade secrets, but under the proposed amendments, manufacturers, importers, and employers would not have to disclose chemical concentration ranges on SDSs or labels if claimed as a trade secret. Rather, manufacturers could use a prescribed concentration range for similarly situated products, further protecting the product formula. This approach would fit with other country's requirements for disclosure of substance ingredients and provide greater protection for confidential

business information and trade secrets. Federal agencies would still have avenues for learning of the substance ingredients if needed. OSHA, in particular, can obtain confidential business information on a specific chemical product in collaboration with EPA under the agencies' [memorandum of understanding](#) and interagency working groups.

Considerations for Manufacturers and Employers

OSHA's proposed HCS amendments are substantial and would affect many chemical product labels and SDSs. Covered employers would need to review their product inventories, ensure proper product classification, and update their written programs, SDSs, and training materials. Employers also may need to modify their labeling procedures and methods of communicating chemical hazards. Once these changes are complete, employers will have to train to affected managers, supervisors, and employees.

If you have any questions on OSHA's proposed amendments to the HCS, would like assistance with submitting written comments, or need help with chemical risk management issues please reach out to the Jackson Lewis attorney with whom you regularly work or any member of our [Workplace Safety and Health Group](#).

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