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New OSHA Hazard Communication Standard Requires Re-labeling Employee Training and Other Steps

Chemical manufacturers, distributors and employers of all types need to take note of new Occupational Safety and Health Administration (OSHA) requirements contained in OSHA's recently modified hazard communication standard (HCS). The modifications make the new HCS consistent with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The United States now joins the EU and numerous other countries in making this move.

Note that currently 27 states or U.S. territories have OSHA-approved plans. These states have six months from the publication of the new standard to adopt comparable versions. State governments may also enact federally approved plans that impose stricter (but not less strict) requirements on employers. Businesses must be aware of any such state rules and adjust their programs accordingly.

The new HCS changes many things for manufactures and distributors of hazardous chemicals, and fewer things for other employers who merely use hazardous chemicals in the workplace. A "hazardous chemical" is "any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified." In addition to making minor changes to familiar terminology – for example, "Material Safety Data Sheets" will now be known as "Safety Data Sheets" (SDS) – the new HCS contains a number of broad-ranging substantive changes.

The schedule for compliance with the new HCS is staggered, as further described below, with December 1, 2013, being a notable deadline for employee training and chemical container re-labeling.

Employers

What Has Not Changed For Employees

The basic requirements for employers are not changed by the new HCS. These include:

- Ensuring that labels on incoming containers of hazardous chemicals are not removed or defaced
- Maintaining safety data sheets that are received with incoming shipments of hazardous chemicals, and ensuring that they are readily accessible during each work shift to employees when they are in their work areas
- Ensuring that employees are provided with information and training to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container

The new HCS also continues with the requirement that employers develop, implement, and maintain at each workplace, a written hazard communication program that, at a minimum, describes how the criteria specified for labels and other forms of warning and training will be met, and that also includes the following: (a) a list of the hazardous chemicals known to be present in the workplace using a product identifier that is referenced on the appropriate SDS; and (b) the methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of chemical containers), and the hazards associated with chemicals contained in unlabeled pipes in a work area.

What Has Changed for Employers

Labels

An employer must ensure that workplace labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. The use of mandatory pictograms in labeling is a new requirement. Diamond-shaped pictograms with a signal word, such as “danger,” must now be used on labels to denote hazard classes for various substances, e.g., flammable, pyrophoric, etc.

Information Available to Employees

Employers must provide employees with effective information on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard that the employees have not previously been trained about is introduced into their work area.

Employers who become newly aware of any significant information regarding the hazards of a chemical must revise the labels within six months of becoming aware of the new information. Chemical-specific information must always be available through labels and SDSs.

Additionally, employees must be informed of any operations in their work area where hazardous chemicals are present, and of the location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and SDSs.

Training

Employers must train employees in at least the following areas by December 1, 2013:

- Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work
- The physical, health, simple asphyxiation, combustible dust and pyrophoric gas hazards, as well as hazards not otherwise classified, of the chemicals in the work area
- The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used
- The details of the hazard communication program developed by the employer, including an explanation of the labels received on shipped containers and the workplace labeling system used by the employer
- The SDS, including the order of information and how employees can obtain and use the appropriate hazard information

In sum, for employers (assuming they do not themselves manufacture or distribute chemicals), the focus of the 2012 HCS will be on training employees on the new hazard warning label elements and implementing the new SDS format by December 1, 2013.

Manufacturers and Distributors The new HCS's requirements fall most heavily on chemical manufacturers and distributors. These include ensuring that chemical hazards are classified, proper labels are affixed and revised as necessary, new SDSs are compliant, and the general training duties noted above are followed.

Labels

The current HCS uses the concept of a "floor" of hazardous chemicals with the hazard being determined by reference to various standards. Under the new HCS, no floor for chemicals exists, but rather hazard classes are now specified by substance. These substance-specific hazard classes provide the basis for label content. An "unclassified hazard," now known as a "hazard not otherwise classified," has no label requirement but must be covered by the SDS, and any such hazards must be addressed in training.

As noted above, the use of pictograms in labeling with a “signal word,” such as “danger,” is a new requirement. Pictograms with empty borders are NOT permitted. In addition, required label information on shipped chemical containers now also includes:

- Product identifier
- Name, address, and telephone number of the chemical manufacturer, importer, or responsible party
- Signal word
- Pictograms with red borders for all labels
- Hazard statement(s)
- Precautionary statement(s)

Manufacturers and distributors must revise container labels within six months of becoming aware of any significant new information

Safety Data Sheets

The new format for SDSs will comprise 17 separate titled parts as follows:

- Identification
- Hazard(s) identification
- Composition/information on ingredients
- First-aid measures
- Fire-fighting measures
- Accidental release measures
- Handling and storage
- Exposure controls/personal protection
- Physical and chemical properties
- Stability and reactivity
- Toxicological information
- Ecological information
- Disposal considerations
- Transport information
- Regulatory information
- Other information, including date of preparation or last revision
- Training

Chemical manufacturers and distributors must, like employers generally, provide the training described above.

Conclusion Because the new HCS is a modified version of the current HCS, its promulgation provides a useful impetus for regulated businesses to review their current HCS compliance during a transition period. During the transition period, which extends over the next few years, compliance with either the old or new standard is permissible. The following milestones should be noted:

- December 1, 2013 – Training on the new label elements and SDS format
- June 1, 2015 – Classification, Label, SDS implementation
- December 1, 2015 – Distributors may ship with old labels up to this date

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