

# Implementation of Hazcom 2012

PROGRESS TOWARDS COMPLIANCE



# Topics to be addressed

- ▶ Litigation/API Settlement Agreement
- ▶ Other Issues
- ▶ Guidance
- ▶ Enforcement Feedback

# Litigation/American Petroleum Institute (API) Settlement Agreement

Ruskin/Silk; SCHC; March 25, 2014; Charleston, SC

# Litigation Issues

- ▶ American Petroleum Institute (Am. Petroleum Inst. V. Sec'y of Labor, D.C. Cir., No. 12-1227, 5/23/12)
  - ▶ Settled February 2014
  - ▶ OSHA issued four interpretations related to the settlement addressing the following issues:
    - ▶ Combustible dust
    - ▶ Hazards Not Otherwise Classified (HNOC)
    - ▶ Single Target Organ Toxicity (STOT)
    - ▶ Petroleum Streams
  - ▶ The letters have been posted on the OSHA website:  
[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_ttype=INTERPRETATIONS&p\\_toc\\_level=0&p\\_keyvalue=](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_ttype=INTERPRETATIONS&p_toc_level=0&p_keyvalue=)

# Litigation Issues/Interpretations

## ► Combustible Dust:

### ► Modification of Required Hazard Statement

- Required hazard statement is: “May form combustible dust concentrations in air.”
- Litigants asked whether this could be modified when the combustible dust hazard is not present in shipped form, but is created when the product is further processed.
  - Proposed two alternatives: ***“If converted to small particles during further processing, handling or by other means, may form combustible dust concentrations in air”*** or ***“If small particles are generated during further processing, handling, or by other means, may form combustible dust concentrations in air.”***

# Litigation Issues/Interpretations

- ▶ Either statement would be permitted under Paragraph C.3.1 of the standard which allows supplementary information “when it provides further detail and does not contradict or cast doubt on the validity of the standardized hazard information.
- ▶ **Safety Data Sheets**
  - ▶ Similarly, OSHA confirmed that manufacturers may include statements that the combustible dust hazard can only occur when the product is further processed, and as well as precautionary statements and HMIS/NFPA ratings, as supplementary information on SDSs.

# Litigation Issues/Interpretations

## ► Labels on Shipped Containers

- OSHA confirmed that HMIS/NFPA ratings can appear on shipped containers as supplementary information as long as they comply with C.3.1 cited above, and C.3.2 which indicates that such information shall not “impede identification of information required by this section.”
- Where labels are provided once downstream, rather than with shipments, under C.4.30, Footnote 2 (hazard not present in shipped form), OSHA confirmed that the label on subsequent shipments will be in compliance with a product identifier, manufacturer name and address, and emergency phone number. OSHA also agreed that this limited exception could be applied to a liquid if there are no other hazards than combustible dust upon evaporation or processing downstream.

# Litigation Issues/Interpretations

## ▶ **Workplace Labels**

- ▶ Clarification of downstream employer's labeling requirements
  - ▶ No requirements if no processing is done, therefore no combustible dust is generated
  - ▶ If there is a stationary process container where the combustible dust is generated, the workplace label requirements apply (label or acceptable alternative identification)
  - ▶ If the chemical is placed in a non-stationary process container where it will be processed to create a combustible dust, that container must be labeled
  - ▶ The labeling requirements only apply when the chemical is in a container; employers may put up signs or placards in a work area to inform employees where labels are not required



# Other Resources/Combustible Dust

- ▶ Memorandum for the Regional Administrators
  - ▶ Provides guidance for enforcement to determine whether a chemical manufacturer or importer has appropriately classified its products
    - ▶ Evidence that the product has been involved in a deflagration or dust explosion event
    - ▶ Available results from acceptable test data
    - ▶ In absence of either event or test data, reliance on published data
  - ▶ Letters of Interpretation
    - ▶ Hazard Statement
    - ▶ Safety Data Sheets
    - ▶ Labeling on Shipped Containers
    - ▶ Workplace Labels

# Litigation Issues/Interpretations

## ▶ Hazards Not Otherwise Classified

### ▶ Additional guidance:

- ▶ Material impairment resulting from workplace exposure
- ▶ Health effect determined in accordance with weight of evidence criteria
- ▶ Physical effects are caused by intrinsic hazards of the specific chemical—which does not include effects that are not chemical specific, such as physical effects resulting from heated liquid (scalds) or spills (falls) which do not fall under the scope of the standard

# Litigation Issues/Interpretations

## ▶ **Single Target Organ Toxicity**

- ▶ Under limited circumstances, OSHA may accept a Category 2 STOT classification for mixtures containing from 1% to less than 10% of Category 1 ingredients based on either single or repeated exposures
  - ▶ Only animal data are available
  - ▶ Use of guidance values with weight of evidence may result in Category 2
  - ▶ OSHA will not accept a decision not to classify in this situation

# Litigation Issues/Interpretations

## ▶ **Petroleum Streams**

- ▶ Includes crude oil and anything derived from crude oil
- ▶ For hazard classes other than carcinogens, germ cell mutagens, or reproductive hazards (CMRs), classification is to be done as follows:
  - ▶ Based on test data for the petroleum stream when available
  - ▶ Where not available, based on toxicologically appropriate read across from test results of a substantially similar stream
  - ▶ Where neither test data for the stream, or a substantially similar stream, are available, the methods for estimating hazards in Appendix A shall be used (e.g., cut-offs)

# Litigation Issues/Interpretations

- ▶ For CMR hazard classes:
  - ▶ When reliable and good quality data are available to classify (based on testing of the stream or substantially similar stream), weight of evidence analysis supported by data may be relied upon
  - ▶ Studies are conclusive if, when viewed in conjunction with all relevant information about the chemical, results are consistent with the relevant information and allow a strong inference that the lack of effects is not due to a poor study design
  - ▶ Where quality data are not available, then the methods specified in Appendix A for these effects will be used (e.g., cut-offs)

# Litigation Issues/Interpretations

- ▶ The interpretation letter also addressed disclosure of ingredients in petroleum streams
  - ▶ For petroleum streams, it may be more important in some situations to address a group of constituents that is toxicologically similar rather than individual ingredients (e.g., polycyclic aromatic hydrocarbons)
  - ▶ Other constituents that are classified as hazardous chemicals and are present in the petroleum stream need to be individually disclosed (e.g., benzene)
  - ▶ Where exact percentages are not known, a concentration range may be used

# Additional Litigation

- ▶ Coalition of five industry groups, including American Chemistry Council (ACC) (National Oilseed Processors Ass'n v. OSHA, D.C. Cir., No. 12-1228, 5/24/12)
  - ▶ Settled with ACC on combustible dust (API settlement agreement interpretations)
  - ▶ Other groups are proceeding with litigation
    - ▶ Their Brief was filed on February 24, 2014
  - ▶ Provisions remain in effect

# Litigation Issues

- ▶ American Tort Reform Association (Am. Tort Reform Ass'n v. OSHA, D.C. Cir., No. 12-1229, 5/24/12)
  - ▶ Oral arguments took place in October 2013.
  - ▶ Court ruled in OSHA's favor.
- ▶ CropLife America (CropLife Am. v. OSHA, D.C. Cir., No. 12-1231, 5/25/12)
  - ▶ Challenge withdrawn due to untimely filing.



# Other Issues

QUESTIONS

# Small Packages

- ▶ No across-the-board small package label exemptions
- ▶ OSHA will provide practical accommodation on a case-by-case basis (same as original HCS)
- ▶ Initial accommodation (consistent with examples being developed in the UN Subcommittee)--where it is not feasible to use pull-out labels, fold back labels, or tags with the full required information on a small container, the chemical manufacturer or importer may provide the following:
  - ▶ Product identifier, signal word, appropriate pictograms, name and phone number
  - ▶ A statement indicating the full label information for the chemical is provided on the outside package

# Carcinogens

- ▶ Scope of coverage
  - ▶ If you have identified a chemical as a carcinogen under the 1994 HazCom rule, it is highly unlikely that it will not be a carcinogen under HazCom 2012
  - ▶ The criteria in HazCom 2012 were derived from the IARC criteria
  - ▶ OSHA has continued inclusion of information on the SDS when there is one good study available that indicates carcinogenicity
  - ▶ IARC and NTP carcinogen classifications are still required to be on the SDS
  - ▶ OSHA allows chemical manufacturers and importers to rely on IARC and NTP in lieu of applying the carcinogen classification criteria themselves
  - ▶ The weight of evidence is primarily used in HazCom 2012 to provide better information about the potential severity of effect, rather than being used to exclude classification

# Disclosure of Ingredients

- ▶ Chemical manufacturers and importers must disclose the best information they have regarding the ingredients present in a mixture
  - ▶ If they purchase an ingredient from a supplier, and the supplier only gives them a range, then the range should be provided in the new SDS for the mixture
  - ▶ If a component varies in the manufacturing stream, and the amount in each batch varies slightly, a realistic range may be provided as long as the variance is not capable of changing the hazard of the product (where that occurs, multiple SDSs may be required)

# Workplace Labels

- ▶ Requirements have not changed in HazCom 2012
- ▶ OSHA did not require GHS labels to be on workplace containers, but they can be used for workplace labeling
- ▶ If you use alternative labeling, it has to provide information that is accurate under the HazCom 2012 criteria—i.e., while it does not have to be provided in the shipped container label format, the information provided has to be consistent (you may not use rating systems where the criteria are inconsistent with the HazCom 2012 criteria—the appropriate degree of severity of effect must be conveyed with whatever system is used)

# Label Format

- ▶ HazCom 2012 does not provide a label format—there is required information for the label
- ▶ The required information must be displayed together on the label—you cannot put the pictograms on the front of the container, and the hazard statements on the back
- ▶ You could, however, put all of the specified information together on the back of a container while having non-mandatory information on the front
- ▶ The most important aspect is that the information be ***legible and prominently displayed***

# Other Issues

- ▶ Laboratory requirements
- ▶ Interface with other labeling requirements
  - ▶ DOT
  - ▶ CPSC
  - ▶ EPA
  - ▶ NFPA/HMIS
- ▶ Hazard classification

# General Rules to Apply

- ▶ Many of the questions are still on provisions that were in the 1994 HazCom rule—if the provision has not changed, OSHA's interpretation remains the same as well
- ▶ Ask yourself what the requirement you are questioning is intended to achieve, and do what is needed to reach that goal
  - ▶ The purpose is to provide information to downstream employers and exposed employees so people can be protected
  - ▶ That purpose is best achieved by providing complete and accurate information

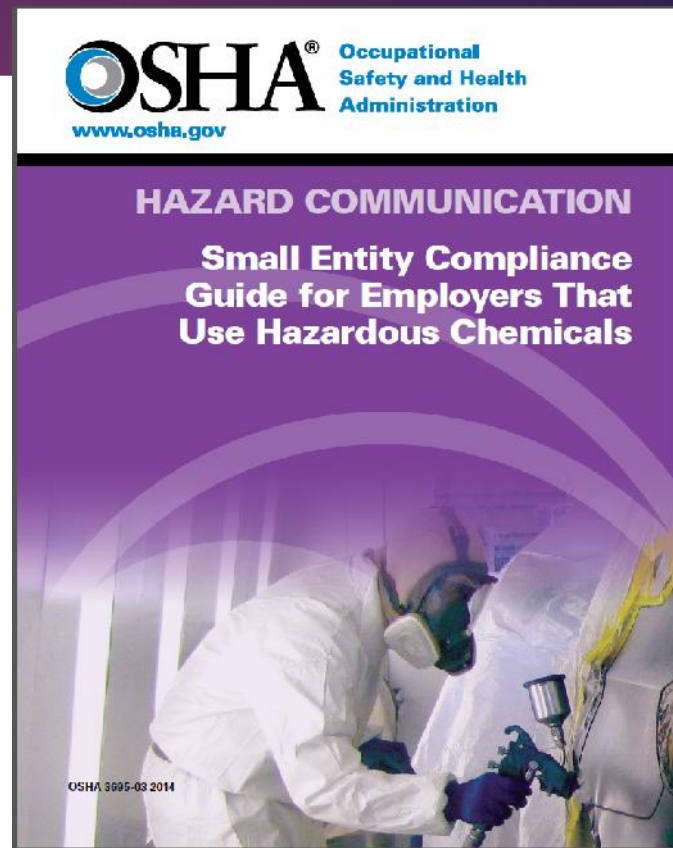


# Guidance

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# Small Entity Compliance Guide

- ▶ Guidance for employers implementing hazard communication programs
- ▶ Does not address how to classify a chemical
- ▶ Focuses on parts of the standard that apply to employers



# Steps to Compliance




- ▶ The guide provides a step-by-step approach to compliance
- ▶ It also includes two appendices—a sample written hazard communication program, and a quick guide to hazard communication training
- ▶ A fact sheet has also been issued that summarizes the steps to compliance

Figure 6: An Effective Hazard Communication Program





# Quick Card on NFPA 704


- ▶ To address confusion between the purpose and implementation of HazCom 2012 labels, and NFPA 704 labels, OSHA has provided a quick card comparing them


## Comparison of NFPA 704 and HazCom 2012 Labels

	 NFPA 704	 HazCom 2012
<b>Purpose</b>	Provides basic information for emergency personnel responding to a fire or spill and those planning for emergency response.	Informs workers about the hazards of chemicals in workplace under normal conditions of use and foreseeable emergencies.
<b>Number System: NFPA Rating and OSHA's Classification System</b>	0-4 0 least hazardous 4 most hazardous	1-4 1 most severe hazard 4 least severe hazard • The hazard category numbers are NOT required to be on labels but are required on SDSs in Section 2. • Numbers are used to CLASSIFY hazards to determine what label information is required.
<b>Information Provided on Label</b>	<ul style="list-style-type: none"> <li>Health-Blue</li> <li>Flammability-Red</li> <li>Instability-Yellow</li> <li>Special Hazards-White</li> <li>* OX Oxidizers</li> <li>* W Water Reactive</li> <li>* SA Simple Asphyxiants</li> </ul>	<ul style="list-style-type: none"> <li>Product Identifier</li> <li>Signal Word</li> <li>Hazard Statement(s)</li> <li>Pictogram(s)</li> <li>Precautionary statement(s) and</li> <li>Name address and phone number of responsible party.</li> </ul>
<b>Health Hazards on Label</b>	Acute (short term) health hazards ONLY. Acute hazards are more typical for emergency response applications. Chronic health effects are not covered by NFPA 704.	Acute (short term) and chronic (long term) health hazards. Both acute and chronic health effects are relevant for employees working with chemicals day after day. Health hazards include acute hazards such as eye irritants, simple asphyxiants and skin corrosives as well as chronic hazards such as carcinogens.
<b>Flammability/Physical Hazards on Label</b>	NFPA divides flammability and instability hazards into two separate numbers on the label. Flammability in red section. Instability in yellow section.	A broad range of physical hazard classes are listed on the label including explosives, flammables, oxidizers, reactive, pyrophorics, combustible dusts and corrosives.
<b>Where to get information to place on label</b>	Rating system found in NFPA Fire Protection Guide to Hazardous Materials OR NFPA 704 Standard System for Identification of the Hazards of Materials for Emergency Response 2012 Edition, Tables 6.1, 6.2, 7.2 and Chapter 8 of NFPA 704.	OSHA Hazard Communication Standard 29 CFR 1910.1200 (2012). 1) Classifying using Appendix A (Health Hazards) and Appendix B (Physical Hazards) 2) Label using Appendix C
<b>Other</b>	The hazard category numbers found in section 2 of the HC 2012 compliant SDSs are NOT to be used to fill in the NFPA 704 diamond.	Supplemental information may also appear on the label such as any hazards not otherwise classified and directions for use.
<b>website</b>	<a href="http://www.nfpa.org/704">www.nfpa.org/704</a>	<a href="http://www.osha.gov">www.osha.gov</a> OR <a href="http://www.osha.gov/reg/hazcom/index.html">www.osha.gov/reg/hazcom/index.html</a>

**For more information:**



National Fire Protection Association  
[www.nfpa.org](http://www.nfpa.org)  
(800) 344-3555



Occupational Safety and Health Administration  
U.S. Department of Labor  
[www.osha.gov](http://www.osha.gov) (800) 325-OSHA (6742)

OSHA 3070-09-2013

# Additional Guidance in Preparation

- ▶ Hazard Classification
- ▶ Weight of Evidence
- ▶ Model Training
- ▶ SDS Technical Guidance

# Enforcement feedback

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# Enforcement

- ▶ No statistics are available yet, but the Hazard Communication Coordinators in the Regions have provided anecdotal information about compliance.
  - ▶ In general, medium and large sized employers have complied with the December 1, 2013 date for training of workers. Some small employers have, but others are still unaware of their obligation to provide training. A few citations have been issued for failing to train workers under HazCom 2012.
- ▶ New labels are beginning to be seen in some workplaces, but it has not been widespread. Products obtained recently from large manufacturers are more likely to have the new labels.

# Enforcement

- ▶ Questions posed to the Regions have not revealed any major trends, other than the focus being on labeling. Still some confusion about NFPA/HMIS ratings, labeling of secondary containers, and interface with DOT labels, Canada's labels, etc.
- ▶ The revised compliance directive for the modified Hazard Communication Standard has been drafted, and is in the clearance process.



# Conclusion

- ▶ Implementation is proceeding, and good progress has been made.
- ▶ OSHA expects that HazCom 2012 labels and SDSs will be seen more frequently in workplaces over the course of 2014 as chemical manufacturers and importers work towards the 2015 compliance dates.
- ▶ The Agency will continue to monitor questions received, and issues raised, to determine where additional guidance or other assistance is needed to help ensure compliance.



**Occupational Safety  
and Health Administration**



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