

Hazard Communication Standard (HCS 2012) – An Enforcement Overview

March 17, 2015
SCHC Spring Meeting

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Outline

- June 1, 2015 enforcement guidance
- Highlights from questions and letters of interpretation
- HCS violation summary
- What's next? – Revised Compliance Directive

June 1, 2015 Effective Date Enforcement Guidance

June 1, 2015 Effective Date

The HCS (j)(2):

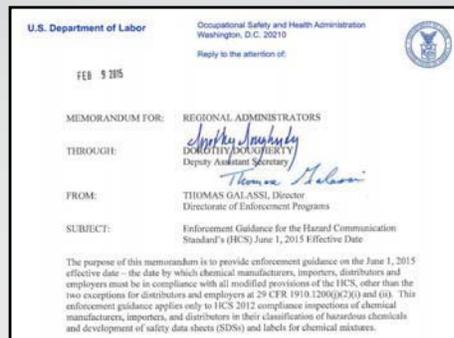
- All chemical manufacturers, importers, distributors, and employers shall be in compliance with all modified provisions of HCS no later than June 1, 2015:
 - Two exceptions under (j)(2)(i) & (ii):
 - 1) Distributors - December 1, 2015
 - 2) Employers - June 1, 2016

OSHA Petitioned

- OSHA received petition from American Coatings Association – co-signed by 8 other petitioners
 - Seeking temporary relief for labeling and SDS for mixtures due to:
 - Difficulty in obtaining information from upstream suppliers;
 - Information not readily available;
 - Computer modeling programs do not aid in classification; and
 - OSHA has not adequately addressed the issue of mfg cycles and sell through times.
- OSHA reviewed the petition
 - Discussions held with Asst. Sec. Dr. Michaels.

June 1, 2015 Enforcement Guidance

- OSHA response to petition
 - Developed field enforcement guidance
 - issued February 9, 2015.



U.S. Department of Labor
Occupational Safety and Health Administration
Washington, D.C. 20210
Reply to the attention of:

FEB 9 2015

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Dorothy Jackson*
Deputy Assistant Secretary

FROM: *Thomas Galassi*
THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT: Enforcement Guidance for the Hazard Communication Standard's (HCS) June 1, 2015 Effective Date

The purpose of this memorandum is to provide enforcement guidance on the June 1, 2015 effective date – the date by which chemical manufacturers, importers, distributors and employers must be in compliance with all modified provisions of the HCS, other than the two exceptions for distributors and employers at 29 CFR 1910.1205(d)(2)(i) and (ii). This enforcement guidance applies only to HCS 2012 compliance inspections of chemical manufacturers, importers, and distributors in their classification of hazardous chemicals and development of safety data sheets (SDS) and labels for chemical mixtures.

Manufacturer/Importer Unable to Comply

- Mfg/Imp have not received classification and SDS information from upstream supplier(s) of raw materials.
- OSHA will determine if the manufacturer or importer has exercised “reasonable diligence” and “good faith efforts” to comply with the standard.
- Upstream raw material suppliers will not be in compliance if they do not have HCS 2012-compliant SDSs and labels after June 1, 2015.

“Reasonable Diligence” & “Good Faith Efforts”

Manufacturer or importer must provide documentation of its substantive efforts to:

- Obtain classification information and SDSs from upstream suppliers;
 - Demonstrate attempt(s) to obtain the necessary SDSs through both oral and written communication directly with the upstream supplier.
- Find hazard information from alternative sources (e.g., chemical registries); and,
- Classify the data themselves.

“Reasonable Diligence” & “Good Faith Efforts”

Depending on the circumstance, a CSHO must consider all, or any combination of, the following:

- Developed and documented the process used to gather the necessary classification information from its upstream suppliers and the status of such efforts;
- Developed and documented efforts to find hazard information from alternative sources (e.g., chemical registries);
- Provided a written account of continued dialogue with its upstream suppliers, including dated copies of all relevant written communication with its upstream suppliers;

“Reasonable Diligence” & “Good Faith Efforts” (con’t)

- Provided a written account of continued dialogue with its distributors, including dated copies of all relevant written communication with its distributors informing them why it has been unable to comply with HCS 2012; and,
- Developed the course of action it will follow to make the necessary changes to SDSs and labels.

Reasonable diligence and good faith also requires that the manufacturer or importer provide a *clear* timeline for when it expects to comply with HCS 2012.

Time Period to Create HCS 2012-Compliant SDSs and Labels

SDSs

- A manufacturer or importer must create HCS 2012-compliant SDSs within **six months from the date it receives all of the hazard information for the ingredients in a mixture.**

Labels

- A manufacturer or importer must create container labels to comply with HCS 2012 within **six months from the date that it has developed HCS 2012-compliant SDSs.**

Time Period for Distributors

- Where a manufacturer or importer cannot comply with the June 1, 2015 effective date there may be distributors consequently unable to comply with the December 1, 2015 effective date.
- OSHA will evaluate if the distributor exercised reasonable diligence and good faith to comply by December 1, 2015 effective date.
 - Using the same information for mfg/imp.
- Distributors must provide HCS 2012-compliant SDSs and labels the first shipment (or upon request) after receiving the information from the manufacturer or importer.

Highlighted Responses to Questions and Letters of Interpretation

Labeling

- Pictograms must have white background – see Appendix C.2.3.1
- Blank red frames, words, the letter "X," or other means to indicate that the red frame has been intentionally left blank are not permitted on labels, unused pictograms must be fully blacked-out when not in use.
- Hazard statements may be combined as long as all of the hazard information is conveyed - see Appendix C.2.2.1

Labeling

- Signal word, Hazard statement(s), and Pictogram(s) must be located together – per (f)(3).
- Label elements must be affixed to the immediate container/package holding the chemical.
- Tags, pull-out labels, or fold-back labels can be used to label small containers.
 - If tags, pull-out labels, or fold-back labels cannot be used, OSHA's practical accommodation for small shipped containers include:
 - Product Identifier
 - Pictogram(s)
 - Signal word
 - Manufacturer's name and phone number
 - A statement indicating the full label information for the chemical is provided on the outside package.

Labeling

- Rail cars/Tank trucks
 - Label must be posted on the outside or attached to the accompanying shipping papers/bill of lading.
 - Label may not be shipped separately.
- Use of other countries' classifications on a label is acceptable so long it does not contradict or cast doubt on the required HCS information.

Requirement for single or multiple SDSs

- Concentrated form of chemical vs. ready-to-use product (e.g. chemical mixed w/ water):
 - A SDS is required for each hazardous chemical that is produced, so a SDS for the concentrate product is required.
 - If the downstream use will create a new hazard, that must be disclosed on the SDS.
 - If the concentrate chemical has different ingredients than the ready-to-use chemical, unique SDSs must be developed.
- SDSs are required for each distinct hazardous chemical where hazardous chemicals are packaged in separate inner containers or distinct compartments of a single container.

Classification of a mixture containing crystalline silica

- Classification is based on total crystalline silica by weight or volume in the mixture.
 - may contain silica particles that are not respirable, but can become respirable during normal conditions of use or foreseeable emergencies (e.g. blasting or grinding).
- A mixture containing at least one ingredient that has been classified as a carcinogen must be classified as a carcinogen when the mixture contains 0.1 percent or more total of the carcinogenic ingredient(s).
- Additionally, if the mixture contains less than 0.1 percent of the carcinogenic ingredient but the classifier has information that the hazard of the ingredient will be evident, the mixture must be classified accordingly.

Product that is sanded in the course of normal use

- Requirements of the HCS are triggered where a chemical “is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.”
- “Exposure” is defined as including “potential (e.g. accidental or possible) exposure.”
 - OSHA has interpreted this language as excluding “substances for which the hazardous chemical is inextricably bound or is not readily available, and, therefore, presents no potential for exposure.”
- Consistent with OSHA’s longstanding position, whether there is a potential for exposure during sanding (or any other potential exposure during normal conditions of use or a foreseeable emergency) it must be considered in classification.

Jurisdiction

- **CPSC vs. HCS 2012** labeling requirements
 - Any hazardous chemical that is not subject to CPSC exemptions or other exemptions listed in (b)(5) must be labeled in accordance with the HCS 2012 requirements
- **Academic and research laboratories** that are covered under 1910.1450 are exempt from the HCS 2012.
- **Federal Railroad Administration (FRA)** does not preempt OSHA from enforcing the HCS 2012 with regards to hazmat workers.
- **RCRA vs. HCS 2012**
 - When waste does not meet the definition of “hazardous waste” under the RCRA regulations, it is covered by the HCS if it meets the standard’s definition of “hazardous chemical” and if it does not fall under any of the other HCS exemptions.

Reminder – Enforcement During Transition period

- It is acceptable to have HCS 1994 labels and HCS 2012 SDSs or vice versa.
 - SDSs and HCS 2012 labels must have the information from the hazard classifications, whereas MSDSs and HCS 1994 labels must have the information from hazard determinations.
- The manufacturer or importer may not partially implement a HCS 2012-compliant label or SDS for an individual product:
 - For example - not including all the required precautionary statements on the revised label or all the required information on the SDS.

HCS Violation Summary Dec. 1, 2013 – Feb. 2, 2015 (federal data only)

HCS Violations Issued - 12/1/13 – 2/15/15 (federal data only)

**7311 -
total HCS
violations**

Serious - 3863

Willful - 7

Repeat - 152

Other - 3289

HCS Standards Cited

1910.1200(h) -
training

1910.1200(e) -
written program

1910.1200(g) -
(material)
safety data
sheets

1910.1200(f) -
labeling

1910.1200 – Hazard Communication Standards Violated

1910.1200(e)(1) – written program

1910.1200(h)(1) – information and training program

1910.1200(h)(3)(iv) – training on shipped labels, workplace labeling & SDS

1910.1200(g)(8) – maintain MSDS/SDS and readily accessible during each work shift

1910.1200(g)(1) – mfg/importer obtain or develop SDS; employer have a SDS for each chemical

1910.1200(f)(5)(i) and (ii) – container labeling

What's next? - Revised Hazard Communication Directive

- The revised compliance directive for the modified Hazard Communication Standard:
 - Adding enforcement guidance and other LOI information.
- Provide guidance to compliance safety and health officers on how to enforce the revised Hazard Communication standard.
- Information will be available to regulated community through OSHA web site.

Questions?



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