

HAZARD COMMUNICATION

AN ENFORCEMENT UPDATE



Eric R. Brooks, M.S.
Federal Las Vegas Area Director
March 19, 2019
brooks.eric@dol.gov

Overview

- **Highlighted HCS issues covering:**
 - Minimum Risk Pesticides
 - Pictograms on DOT-39 cylinders
 - Labeling of:
 - non-pesticide agricultural chemical products
 - sealed containers
 - Cut-off value and Section 3
 - Silica & HCS
- **Hazard Communication enforcement**



EPA “Minimum Risk Pesticide”

- Section 25(b) “minimum risk pesticides”
 - (e.g., citric acid, corn gluten, garlic, mint oil)
 - “Minimum risk pesticides” meet definition of pesticide as defined in FIFRA and are subject to EPA label requirements
- Spray adjuvants
 - (e.g., surfactants, spreader stickers, crop oils, anti-foaming materials)
 - If not subject to FIFRA, then HCS label would be required
- For either case, an SDS must still be provided/available

Pictogram on DOT-39 type cylinders

- HCS does not require pictogram to be printed onto the cylinder
 - May add adhesive sticker
 - Affix a tag directly to the cylinder
- If cylinder affixed to the cardboard box such that it cannot be separated during use:
 - OSHA would consider the cardboard box to be a “tag”
 - All required HCS labeling information is contained on the cardboard box including an instructions



Labeling of non-pesticide agricultural chemical products

(e.g., tank-mix adjuvants and biostimulants)

- Commonly cycle through sale, return, and resale events over several growing seasons
 - five years or longer
- OSHA exercised its enforcement discretion to allow distributors to ship existing stock packaged (e.g., boxed, palletized, shrink-wrapped, etc.) for shipment for two additional years, *i.e.*, until December 1, 2017
- Request was for distributors to have an additional 2 years (from December 2017) to comply with HCS 2012 label requirements
- OSHA declined request
 - Delaying the re-labeling of products could affect the communication of the hazards and protective measures information

Labeling of sealed containers

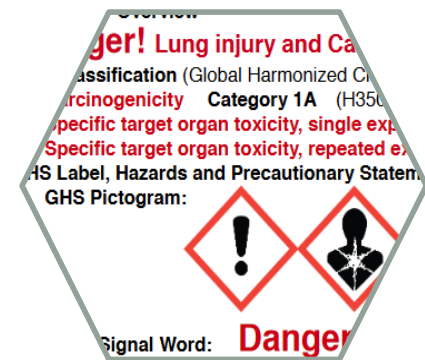
- Sealed containers of chemical cleaning products that are boxed, but are temporarily stored at a manufacturer's or third party warehouse:
 - may be labeled in accordance with paragraph (f)(6).
 - For this type of operation, if the unlabeled individual containers are kept in a sealed box/shrink wrapped pallet with an HCS-compliant label (i.e., in accordance with paragraph (f)(6)) while in the warehouse, there is no requirement to affix an HCS-compliant (f)(1) label to each individual container.
 - However, once the outer box is opened/unwrapped even while in the warehouse, then an HCS-compliant label must be affixed to each individual container of chemical cleaning product in accordance with paragraph (f)(1).

Cut-off Values and SDS Section 3

- Cut-off values are given in Appendix A, *Health Hazard Criteria*.
- Needed information to determine if a hazardous ingredient must be listed:
 - The ingredient's cut-off value;
 - Does the ingredient contribute to the hazard classification;
 - Does the ingredient have an PEL, TLV, and/or occupational exposure limit (OEL)
- Depends on situation:
 - Examples:
 - Above the cut-off value, contributes to the hazard classification, and has an OEL, then it must be included in section 3.
 - Below cut-off value, does not contribute to the hazard classification or have an OEL, then it does not need to be included in section 3.
 - What if above the cut-off value but not classified for that hazard based on the mixture as a whole?
 - Still hazardous – yes, the chemical is required on the SDS.
 - The mixture is not hazardous – no requirement for an SDS.

Silica and HCS

- HCS applies regardless of airborne exposure levels
 - i.e., even when exposures remain below $25\mu\text{g}/\text{m}^3$ (Action Level)
- Must include in employer's HCS program:
 - Access to:
 - Labels
 - Safety data sheets
 - Training
- If product contains crystalline silica $>0.1\%$ as an ingredient, it must be listed on a SDS



Concentration Ranges/ Trade Secret



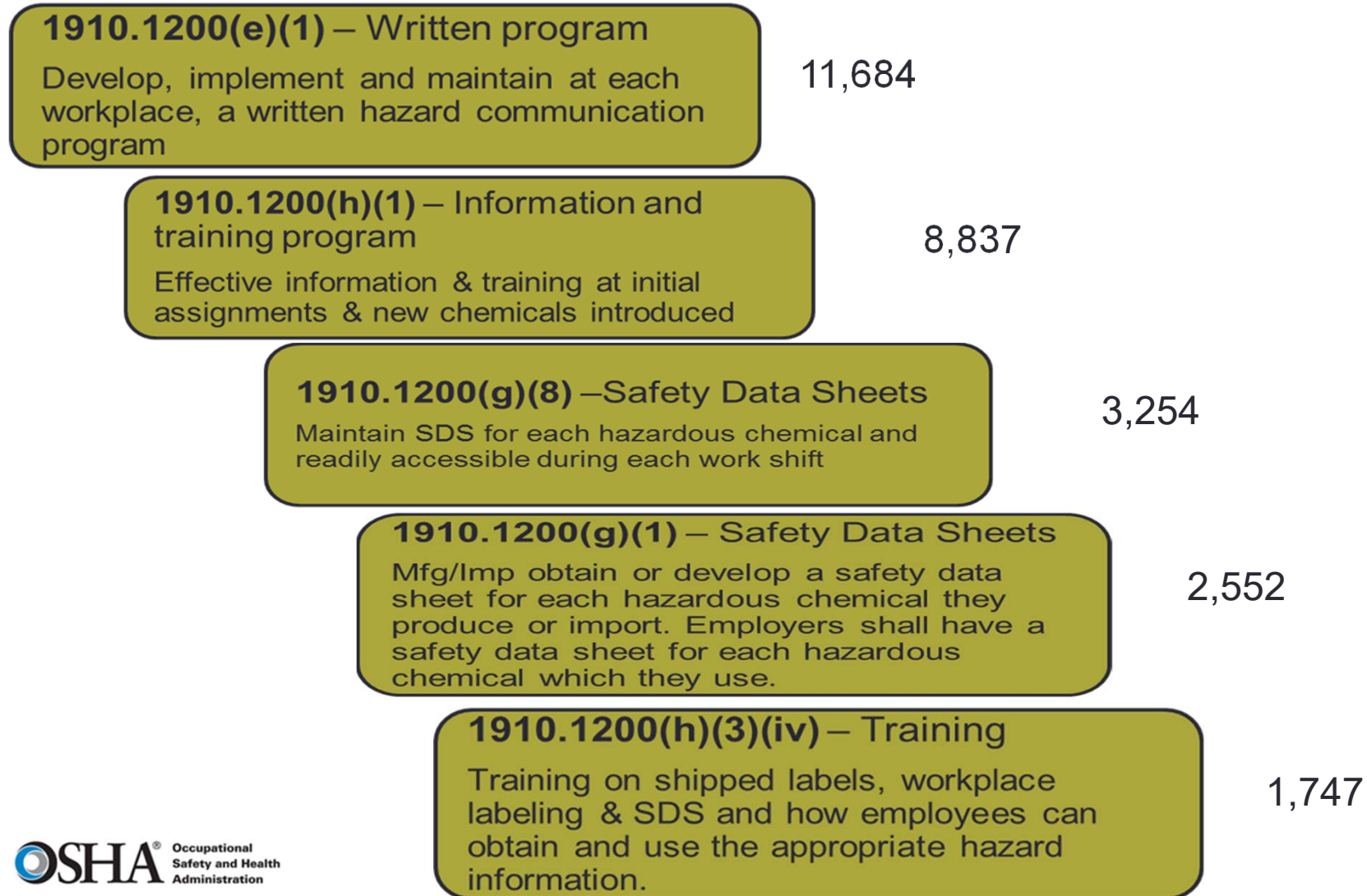
- A concentration range may be used when:
 - A trade secret claim has been made (for the exact percentage);
 - There is batch-to-batch variability in the production of a mixture; or
 - for a group of substantially similar mixtures with similar chemical composition.
- Trade secret status may be claimed for exact percentage composition but not for concentration ranges.
- When classifier uses a range of concentrations:
 - must be sufficiently narrow to meet the intent of disclosing the actual concentration;
 - Accurate representation of the variation.
- The hazard classification must reflect the highest degree of hazard that the mixture could present.
- FAQ developed and posted.
 - Haz Com Web page under Highlights: NEW [Use of concentration ranges on SDSs FAQ](#)

Concentration Ranges/ Trade Secret

Does the Mfg/Imp consider the specific chemical identity a trade secret?	Is the Mfg/Imp using an exact percentage or percentage range to identify the ingredient?	Can the percentage be claimed as a trade secret?	Trade secret indication
Yes	Exact percentage	Yes	SDS indicates the ingredient name and/or exact percentage is being withheld as a trade secret.
No	Exact percentage	Yes	SDS indicates the exact percentage is being withheld as a trade secret but <u>not</u> the ingredient name.
Yes	Percentage range	No	SDS indicates the ingredient name is being withheld as a trade secret but <u>not</u> the percentage range.
No	Percentage range	No	SDS may not indicate either the ingredient name or percentage range as a trade secret.

Top 5 HCS Violations

03/26/2012-09/30/18 (federal only)



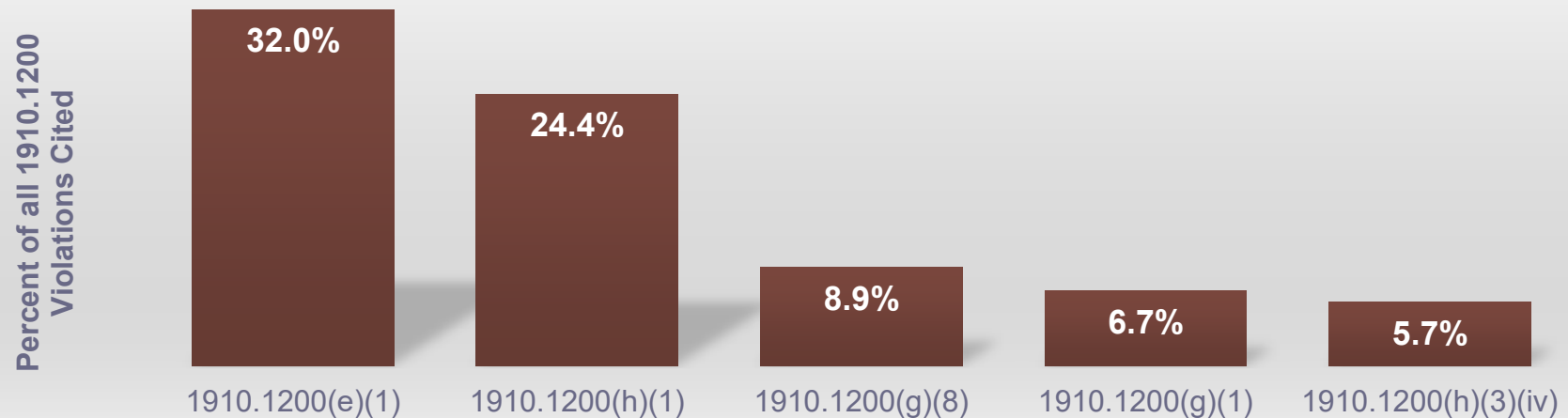
Slide 11

RS-O1

Rundman, Sven - OSHA, 9/6/2018

Top 5 HCS Standards FY 2013- FY 2018

Top 5 Most Frequently Cited Hazard Communication Standards,
(Federal OSHA only)



Your FAQs

- OSHA Proposed Rule implementation of GHS Revision 7 or is it 8 – Any known or suspected deviations from UN GHS Revision 7 or 8? **Standards and Guidance is working on the proposed NPRM**
- Have you or your colleagues seen businesses still relying upon the older out of date MSDSs? How often? **Yes, but extremely rare to see.**

Continued

- Have you or your colleagues seen SDSs with very large concentration ranges, i.e., 20-80 or with ranges that start at zero? If so, what action have you taken? **Yes, OSHA would review material determine if the range provided was the narrowest possible.**
-
- Does OSHA either have a published document available or would be willing to share information on the specific sections/data points/properties of an SDS that are absolutely required vs the sections and information OSHA would consider ‘supplemental’. **Huh?**

Continued

- Can you please give us a general idea of what HCS 2012 questions you have been receiving? **Most often, what happens when a supplier does not...well...supply the SDS.**
- What do you cover in inspections concerning HCS2012? **It can vary...**
- What would trigger a look or deeper look at HCS 2012 issues in an inspection? **Incidents**

Continued

- Are you seeing GHS pictograms in use in-plant labeling? **Yep**
-
- Are most product containers labeled with GHS pictograms?
Yes, HCS labels
-
- What changes have you seen in hazard communication in the workplace since HCS 2012 became effective? **More active involvement between employees and management. More ownership at all levels.**

Continued

- Do you still see HMIS labeling/ratings in workplaces? Do you see HMIS in the workplace as much as before HCS 2012?
Very rare, usually the manufacturers and/or suppliers have caught this.
-
- Does OSHA have a view on Prop 65 safe harbor warning language on SDS? **No comment; it's not our regulation.**



Questions ?

Sven J. Rundman III
Office of Health Enforcement
202-693-2190
www.osha.gov