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## ***Haz Comm 2.0: OSHA Announces Final Hazard Communication Rule***

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### **I. INTRODUCTION**

After many years of discussion and comment, OSHA has issued a more than 800-page Final Rule revising the Hazard Communication Standard, 29 C.F.R. 1910.1200. The primary purpose of the revised rule is to improve employees' understanding of health and physical hazards associated with chemical substances and to align requirements for communicating those standards with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals. The Final Rule was published in the Federal Register on March 26, 2012 and is ***effective sixty (60) days following publication.*** The rule contains milestones that will require employers to be fully compliant with all of the new requirements by 2016, as follows:

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<b>Effective Completion Date</b>	<b>Requirement(s)</b>	<b>Who</b>
December 1, 2013	Train employees on the new label elements and SDS format.	Employers
June 1, 2015 December 1, 2015	Comply with all modified provisions of this final rule, except:  Distributors may ship products labeled by manufacturers under the old system until December 1, 2015.	Chemical manufacturers, importers, distributors and employers
June 1, 2016	Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards.	Employers
Transition Period	Comply with either 29 CFR 1910.1200 (this final standard), or the current standard, or both.	All chemical manufacturers, importers, distributors and employers

(U.S. Department of Labor, located at <http://www.osha.gov/dsg/hazcom/HCSFactsheet.html>)

The Final Rule also contains revisions to other OSHA standards, including chemical-specific requirements such as those related to formaldehyde (1910.1048), asbestos (1910.1001, 1915.1001, and 1926.1101), benzene (1910.1028), hazardous waste operations and emergency response (1910.120, 1926.65), and process safety management (1910.119, 1926.64) to be consistent with the revised Hazard Communication Standard.

## **II. DISCUSSION**

Perhaps the most significant changes in the Final Rule relate to labeling of hazardous chemicals and the development of **Safety Data Sheets** (SDS) (previously referred to as Material Safety Data Sheets or MSDS). The Final Rule includes mandatory appendices related to labels

on containers (Appendix C) and SDS (Appendix D), each of which contain very specific requirements that previously did not exist under Section 1910.1200. Chemical manufacturers are required to label containers of hazardous chemicals with the following information:

- 1) product identifier,
- 2) signal word,
- 3) hazard statement(s),
- 4) pictogram(s), precautionary statement(s), and
- 5) name, address, and telephone number of the chemical manufacturer, importer, or other responsible party.

The current Hazard Communication Standard required only “appropriate hazard warnings.”

Under the Final Rule, Appendix C gives very specific instructions as to the required verbiage and pictograms depending on the classification of the chemical hazard(s).

Similarly, the Final Rule includes far more specific requirements for the SDS than the current Hazard Communication Standard includes with respect for MSDS. For example, the Final Rule requires information to be communicated on the SDS in a *specific order*, whereas the current Hazard Communication Standard specifies only the information that must be included on the MSDS without specifying an order or format. Mandatory Appendix D provides additional detail as to the required format and information for SDS.

### **III. ENFORCEMENT ISSUES**

As most employers are or should be aware, the Hazard Communication Standard is one of the most frequently cited standards by OSHA. In addition, OSHA estimates that over 5 million workplaces in the United States would be affected by the revised Hazard Communication Standard. The previous Hazard Communication Standard was largely considered to be a “performance-oriented” standard, which contained general requirements and allowed employers

the flexibility to determine the best way to comply with those general requirements. For example, under the previous standard, MSDS did not have to be in a particular format. Rather, the standard specified the information required, and then the chemical manufacturer or importer could develop MSDS in any particular format. Similarly, the previous standard contained general requirements for chemical labels, and left the precise methods of implementation to the employer's discretion.

The revised Hazard Communication Standard contains a great deal more specificity as to the particular format required both for the SDS and for chemical labels. As a consequence, employers who once argued that they had met the intent of the standard when defending against an OSHA citation will have fewer opportunities to assert such an argument. OSHA now has license to hold employers to the very specific requirements found in the new rule, and employers who violate those specific requirements would likely receive a citation. Thus, employers must be diligent in ensuring that they understand the new requirements for hazard classification and are positioned to comply with the new specific requirements in advance of the milestones outlined above.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

The Hazard Communication Standard affects all or nearly all employers, from chemical manufacturers to retailers to hotels whose employees work with cleaning agents. Employers must be aware of their obligations to communicate hazards of chemical substance, and must have a process for updating existing labels, SDS, hazard assessments, and training programs to comply with the new Hazard Communication Standard. To that end, it is recommended:

- Employers should evaluate the workplace to identify hazardous chemicals to which employees may be exposed.

- Chemical manufacturers and importers should develop a process for updating their chemical hazard analyses, labels, and SDS.
- Employers whose employees work with or around hazardous chemicals must ensure that they obtain updated SDS from the chemical manufacturer.
- Employers should ensure that employees who work with or around hazardous chemicals are trained to recognize the pictograms and hazard warnings that will be required under the new Hazard Communication Standard. Employers should document this training and develop mechanisms to ensure that employees understand the hazards of working with or around hazardous chemicals.