

OSHA Plans To Amend the Hazard Communication Standard

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PRACTICES Labor and Employment, OSHA, Environmental, Chemical

On May 20, the Occupational Safety and Health Administration (OSHA) issued a final [rule](#) amending its Hazard Communication Standard (HCS). Modifications to the standard include revised criteria for classification of certain health and physical hazards, revised provisions for updating labels, new labeling provisions for small containers, technical amendments related to the contents of safety data sheets (SDSs), new provisions related to trade secrets and related revisions to definitions of the terms used in the standard. While the final rule will become effective July 19, 2024, OSHA is allowing a tiered approach for compliance with specific provisions.

By way of background, the HCS was first promulgated by OSHA in 1983 to provide a standardized approach to workplace hazard communication associated with exposure to hazardous chemicals. The HCS requires chemical manufacturers or importers to classify the hazards of the chemicals they produce or import. It also requires all employers to provide information to their employees about the hazardous chemicals to which they may be exposed, by means of a hazard communication program, labels and other forms of warning, SDSs, and information and training. In 2012, OSHA revised the HCS to align with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

According to OSHA, the final rule amends the HCS primarily to align with GHS, Revision 7. Additionally, current amendments to the HCS “address specific issues that have arisen since the 2012 rulemaking,” and “provide better alignment with other U.S. agencies and international trading partners,” while enhancing the effectiveness of the standard by ensuring employees are appropriately apprised of the chemical hazards to which they may be exposed, thus reducing the potential incidence of chemical-related occupational illnesses and injuries. For reference, OSHA has provided a side-by-side [comparison](#) between the 2012 version of the HCS and the current amendments. OSHA has also [released](#) a “Questions & Answers for OSHA's Update to the HCS Final Rule.”

A high-level summary of the amendments follows:

- **Hazard Classification:** The final rule requires the hazard classification to include any hazards associated with the chemical's intrinsic properties including: (i) a change in the chemical's physical form and; (ii) chemical reaction products associated with known or reasonably anticipated uses or applications. According to OSHA, this language ties the chemical manufacturer, importer, or distributor's obligation to what such party knows or can reasonably anticipate about the product. OSHA does “not intend for an upstream supplier or manufacturer to identify every conceivable use or process in which a downstream user might apply the chemical and to classify these potential hazards of chemicals downstream.” Instead, the intent is “to ensure classification only for those downstream uses where the manufacturer knows or could reasonably anticipate how the chemical will be used and where that use creates a hazard that needs to be communicated in the workplace.”

- **Labeling:** The final rule adds flexibility for label updates on packages that have been released for shipment. Specifically, for chemicals that have been released for shipment and are awaiting future distribution, chemical manufacturers, importers, distributors, or employers have the option not to relabel those containers. However, if they do not relabel the containers, they must provide the updated label for each individual container with each shipment. The final rule also provides flexibility (in terms of minimum information required) in labeling containers that are less than or equal to 100 ml capacity. Further, containers that are less than or equal to 3 ml in capacity only require a product identifier. The final rule also harmonizes the labeling requirements between OSHA and the DOT.
- **SDS:** The final rule requires manufacturers and importers to ensure that the SDSs for the chemicals are in English. The language in the 2012 HCS limited this requirement to manufacturers and importer *preparing* the SDSs. Employers may continue to maintain copies of SDSs in other languages. Other updates to the SDSs primarily align them with the GHS, Revision 7, and accommodate other amendments under the final rule.
- **Trade Secrets:** Among other specific chemical information that a manufacturer or importer may withhold as trade secret, under the final rule, they can also withhold concentration range of a substance in a mixture provided that (among other things) the chemical's SDS discloses the concentration range as falling within one of the prescribed ranges, and the concentration range used is the narrowest range possible.

Compliance deadlines for the various amendments range from eighteen months after publication of the final rule to forty-two months after publication. Employers should review the amendments and plan for compliance with the applicable provisions by the required deadlines.