

Regulatory Updates
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SAFETY

OSHA HazCom Standard is Being Updated - OSHA has issued a proposed rule to revise the Hazard Communication Standard (HCS) to maintain conformity with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), align certain provisions with Canada and other U.S. agencies, and address issues that have developed since implementation of the 2012 standard. Read more [here](#), including a link to making comments. Here are some details:

The GHS is updated every two years. OSHA is now catching up to Revision 7 of the GHS, published in 2017. OSHA has signaled that it is not proposing to change the fundamental structure of the HCS, which was enacted in 1983 to cover the chemical manufacturing industry and expanded in 1987 to all industries where workers are exposed to hazardous chemicals. The proposed changes include:

- Adding new hazard classification categories for flammable gases, aerosols and desensitized explosives
- Allowing withholding as a trade secret the concentration range of a chemical in a mixture, provided the SDS includes the ingredient's concentration as one of several newly listed ranges
- Emphasizing that hazards identified under normal conditions of use that result from a chemical reaction must appear on the SDS even when not required for the label
- Revising the definition of "exposure or exposed" to clarify that the HCS covers the hazards of all hazardous chemicals, including Hazards Not Otherwise Classified (HNOCs)
- Adding new labeling options for certain small containers
- Changing mandatory Appendix C on the allocation of label elements to "provide improved safety information and greater detail and clarity for downstream users"
- Seeking comments on whether the requirement to include on an SDS the chemical name and concentration of ingredients classified as "health hazards" should be expanded to include physical hazards and HNOCs, though OSHA is not currently proposing this change

Environmental safety and health professionals should review the proposed update for provisions that could impact their particular HCS implementation efforts. A link to OSHA's redline comparison of the proposed changes can be found [here](#).

OSHA is proposing that chemical manufacturers, importers and distributors evaluating substances comply with all modified HCS provisions no later than one year after the effective date (of sixty days from publication of the final rule) and those evaluating mixtures comply no later than two years after the effective date. (Phelps Dunbar LLP - J. Alan Harrell, 2/18/2021.)

The deadline for submitting comments is April 19, 2021.

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OSHA Issues COVID Guidance on 1/29/2021 - The guidance issued on January 29, 2021 is intended to inform employers and workers in most workplace settings outside of healthcare to help them identify risks of being exposed to and/or contracting COVID-19 at work and to help them determine appropriate control measures to implement. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. Click [here](#) for details. (OSHA website.)

DuPont Manager Indicted for 2014 LaPorte TX Fatalities – “Chemical manufacturing company DuPont and a former employee were indicted by a federal grand jury in Texas for the part they played in the 2014 La Porte chemical release that killed four employees. Kenneth Sandel, a manager who ran the company’s Insecticide Business Unit, and DuPont representatives were scheduled to appear in court on charges they knowingly violated federal safety regulations and negligently released an extremely hazardous substance. . . Allegedly, DuPont engineers and Sandel knowingly failed to implement certain company safety procedures required by federal regulations. The indictment alleges they planned “to divert a large volume of methyl mercaptan gas into a waste gas pipe system during the day before and night of the fatal incident.” Sandel failed to implement “necessary procedures to evaluate safety aspects of that plan,” such as prohibiting workers from “opening the pipe to the atmosphere.” If convicted, Sandel faces up to five years in federal prison for the federal safety regulations violations and an additional year under the negligence charge, along with fines up to \$250,000 for both.” Read the full article [here](#). (safetynewsalert.com, Merriell Moyer, 2/9/2021.)

OSHA, EPA take on Workplace Exposure - On January 8, 2021, EPA and the Occupational Safety and Health Administration (OSHA), signed a Memorandum of Understanding (MOU) that advances collaboration and communication on EPA’s review of new chemicals under the Toxic Substances Control Act (TSCA) Title 5. This MOU provides a framework for coordination and communication between the two agencies on exposure to new chemicals in the workplace and will help achieve a common goal of ensuring workers are protected from potential risks. Read the MOU [here](#). (EPA website.)

OSHA Implements Inspection Program to Target Workplaces with Highest Injury and Illness Rates - The U.S. Department of Labor announced that OSHA is updating its inspection program that directs agency enforcement resources to establishments with the highest rates of injuries and illnesses. The [Site-Specific Targeting \(SST\) Directive](#) is OSHA’s primary targeting program for non-construction establishments with 20 or more employees. The agency selects establishments based on injury and illness data employers submitted on Form 300A for calendar years 2017-2019. The new directive replaces Site-Specific Targeting 2016, and includes the following significant changes:

- The creation of a new targeting category for establishments indicating consistent injury and illness rate increases over the three-year data collection period, and

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- Allows records only inspections to occur when a compliance safety and health officer determines incorrect data led to an establishment's inclusion in the program. This change ensures OSHA will conduct a full inspection only when the employer has an actual elevated injury and illness experience.

In addition to the SST program, OSHA implements both national and local emphasis programs to target high-risk hazards and industries. (OSHA website, 12/16/2020.)

ENVIRONMENT

National Compliance Initiative – Reduce Process Safety Events – There's lots in the news about process safety events continuing to be a major problem for the chemical industry. One of EPA's initiatives is to use the Risk Management Plan (RMP) rule and the General Duties clause to continue to enforce compliance to reduce incidents. Read more from EPA [here](#). The link also has a good summary of major 2020 incidents. (EPA website.)

Chemical Safety Board (CSB) Investigating Nitrogen Release – A nitrogen release resulting in 6 fatalities and 12 injuries at a Georgia poultry plant is being investigated by the CSB. The incident occurred on January 28, 2021. Liquid nitrogen is used at this facility in a freezing process. Many Pine Chemicals facilities use nitrogen for tank blanketing purposes, so there may be some things that we may learn in spite of the different applications. Read more from the CSB [here](#). (CSB website.)

New Multi-Sector General Stormwater Permit (MSGP) - The MSGP is effective March 1, 2021 for states and territories where EPA is the NPDES permitting authority. Otherwise, check with your state. See details from EPA [here](#). (EPA website,)

Is Additional Reporting for Asbestos in the Future? – A Federal district court ruling in California is requiring reporting of asbestos be strengthened in the Chemical Data Report. It remains to be seen if this ruling will be appealed. Read more [here](#). (Hunton, Andrews, Kurth, LLP, Alexandra B. Cunningham, et al., 1/14/2021.)

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