

# Hazard Communication Standard (HCS 2012) – An Enforcement Update



SCHC Spring Meeting  
April 19, 2016

Sven Rundman  
OSHA, Office of Health Enforcement

# Overview


- ▶ June 1, 2015 enforcement guidance
- ▶ Highlighted issues to HCS
- ▶ HCS Look Ahead – June 1, 2016
- ▶ HCS enforcement summary
- ▶ Compliance assistance
- ▶ Current DSG Activities

# Effective Dates

Effective Completion Date	Requirement(s)	Who
<b>December 1, 2013</b>	Train employees on the new label elements and SDS format.	Employers
<b>June 1, 2015*</b> <b>December 1, 2015</b>	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
<b>June 1, 2016</b>	Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards.	Employers
<b>Transition Period</b>	Comply with either 29 CFR 1910.1200 (this final standard), or the current standard, or both.	All chemical manufacturers, importers, distributors and employers

# OSHA's Guidance on June 1, 2015 Effective Date

July 9, 2015



## OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-02-079 EFFECTIVE DATE: July 9, 2015

SUBJECT: Inspection Procedures for the Hazard Communication Standard (HCS 2012)

**ABSTRACT**

**Purpose:** This instruction establishes policies and procedures to ensure uniform enforcement of the Hazard Communication standard (HCS).

**Scope:** This instruction applies OSHA-wide.

**References:** [Hazard Communication, 29 CFR 1910.1200 \[HCS 1994\]](#)  
[Hazard Communication, Final Rule, Federal Register, Vol. 77, No. 58, pgs. 17574-17826, March 26, 2012 \[HCS or HCS 2012\]](#)  
[OSHA Instruction, CPL-02-00-150, Field Operations Manual \(FOM\), April 22, 2011](#)

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: *Joseph J. Lockamy*  
DEPUTY ASSISTANT SECRETARY  
Deputy Assistant Secretary

FROM: 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 1910.1200(k)(2)(i) and (ii). This enforcement guidance applies only to HCS 2012 compliance (importers of chemical manufacturers, importers, and distributors in their classification of hazardous chemicals and development of safety data sheets (SDS)) and labels for chemical products.

May 29, 2015

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

MAY 29 2015

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Joseph J. Lockamy*  
DEPUTY ASSISTANT SECRETARY  
Deputy Assistant Secretary

FROM: THOMAS GALASSI, Director  
Directorate of Enforcement Programs (DESP)

SUBJECT: Revised Enforcement Guidance for Hazard Communication 2012 (HCS 2012) June 1, 2015 Effective Date

This memorandum is to provide additional, specific guidance on the Hazard Communication 2012 June 1, 2015 effective date. OSHA provided related guidance in its February 9, 2015 memorandum which described the Agency's enforcement position for manufacturers, importers, and distributors that have not received classification and SDS information from upstream suppliers, on which to rely for classification.

# Guidance on Limited Use of HCS 1994 labels

- ▶ Enforcement discretion in limited instances.
- ▶ Applies to a manufacturer or importer
  - Includes those that repackage, blend, mix.
  - Have not received classification and SDS information from upstream suppliers of raw materials due to circumstances beyond their control.
  - Exercised “reasonable diligence and good faith” efforts.
  - Labels and MSDSs must comply with HCS 1994.

# Mfg or Imp with Existing Stock

- ▶ Packaged for shipment before June 1, 2015:
  - Must be HCS 1994-compliant labeled.
  - HCS 2012-compliant labels supplied for each and every individual container shipped; and
  - Appropriate HCS 2012-compliant SDS(s) must be provided.
- ▶ Packaged for shipment after June 1, 2015:
  - Must use HCS 2012-compliant labels.
  - unless “reasonable diligence and good faith” can be demonstrated.
- ▶ After June 1, 2017:
  - All containers shipped by a manufacturer or importer must be HCS 2012 labeled.

# Distributor with Existing Stock

- ▶ Packaged for shipment before December 1, 2015:
  - May continue to ship containers with HCS 1994 label;
  - If HCS 2012-compliant labels and SDS are available, the distributor must provide a HCS 2012-compliant label for each and every container shipped and the appropriate HCS 2012-compliant SDS(s).
  
- ▶ All containers shipped after December 1, 2017:
  - Must use HCS 2012-compliant label;
  - Unless the distributor can demonstrate reasonable diligence and good faith efforts.

# Highlighted Issues to HCS





# Articles

- ▶ Normal conditions of use and foreseeable emergencies and expose employees to chemicals which can pose health and/or physical hazards.
  
  - ▶ Mfg/importer must make a reasonable determination on the known use downstream (e.g., cut, sanded, welded on, etc.).
- 
- ▶ Article definition 29 CFR 1910.1200(c)– A manufactured item other than a fluid or particle:
    - (i) which is formed to a specific shape or design during manufacture;
    - (ii) which has end–use function(s) dependent in whole or in part upon its shape or design during end–use; and
    - (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of the HCS), and does not pose a physical hazard or health risk to employees.

# Labels – (f) (Appendix C)

HazCom 2012

\*Identity, appropriate hazard warnings, and responsible party  
\*Performance-oriented, specifics left to discretion of chemical manufacturer or importer

HazCom 1994

- \*Labeled, tagged, or marked with:
  - Product identifier;
  - Signal word;
  - Hazard statement(s);
  - Pictograms;
  - Precautionary statements; and
  - Name, address, and phone number of the responsible party
- \*Specifies information by hazard class and category

# Workplace (in-house) Labeling

- ▶ Adhere to label requirements of (f)(1)(i)–(v) per (f)(6)(i); **or**
- ▶ Product identifier and words, pictures, symbols, or a combination thereof, providing general information on the hazards of the chemicals, and with other HCS information available.
  - Pictogram may be used but is not required.
  - Precautionary or hazard statements may be used but are not required.



Acceptable?

# Use of NFPA/HMIS<sup>®</sup> Rating Systems

- ▶ Alternative labeling
  - Use of NFPA or HMIS<sup>®</sup> rating systems allowed; but must include product identifier and to make sure that general information regarding all of the hazards of the chemical(s) can be conveyed.
- ▶ The NFPA/HMIS<sup>®</sup> rating systems do not directly correlate with HCS classifications.
- ▶ Must not cast doubt or contradict the validity of the label information.
- ▶ Level of employee awareness must equal or exceed if employee was provided complete health effects information.

# U.S. Address and Phone Number

- ▶ Manufacturer, importer or other responsible party of whoever is preparing or distributing SDS/label.
  - Provides additional information on the hazardous chemical and appropriate emergency procedures.
- ▶ Label and SDS:
  - Emergency number must be a U.S. number.
  - Name and address of the manufacturer, importer or responsible party MUST be the same on both.
- ▶ Importer is required to include their name on the SDS and label in order to complying with the HCS 2012.
  - Preferably the original foreign manufacturer's name and address are removed to prevent confusion.

# Import/Export

- ▶ Imports – duty to label begins when the importer takes control.
  - DOT label required while in transport.
  - Follow .1200(b)(4) for sealed containers where applicable.
  - Containers destined within the U.S. must be labeled in accordance with (f)(1).
  - Should work with overseas manufacturer to produce HCS 2012-compliant label.

# Import/Export

## ▶ Exports:

- Direct shipment to country of destination
  - Placed in DOT or similar approved shipping container.
  - Label the sealed container for the destination country.
  - No HCS label required for each immediate container.
  - .1200(f)(1) label on outside of container or attached to shipping papers/bill-of-lading.
  - Shipping container labeled in accordance with DOT/IMO.
- Temporarily stored on-site prior to shipping
  - Follow above scheme.
  - External packaging labeled in accordance with .1200 (f)(6).
- Stored off-site (e.g., company or third party warehouse) prior to shipping
  - Follow first above scheme.
  - .1200(b)(4) would apply.

# HCS vs. DOT Labeling

- ▶ Two points of concern:
  - Applicability of OSHA hazcom on DOT placarded bulk tanks; and
  - Applicability of OSHA hazcom on tanks containing material not requiring DOT placarding.
- ▶ Current guidance in CPL 02-02-079
  - Same guidance since 1994.
  - While in transport, DOT label takes precedence over HCS label.
  - DOT labels contain symbols; thus considered a pictogram under HCS.
  - For hazards where DOT requires no label, HCS pictograms must appear.



# Tanker Truck and Rail Car Labeling

- ▶ Labeling information may either be posted on the outside of the vehicle or attached to the accompanying shipping papers or bill-of-lading.
  - A label may not be shipped separately.
- ▶ If a tanker truck or railroad tank car:
  - Offloaded into storage tank without storage of tanker/rail car – DOT label sufficient.
  - Stored prior to offloading–(f)(7).
  - Part of the process–(f)(7).
  - Used as a transport container in-house – (f)(6)(i) or (ii).
- ▶ OSHA is working with DOT on fact sheets and cooperative guidance to provide clearer guidance.

# RCRA/Non-RCRA waste/ By-Product and HCS 2012

- ▶ Generated waste that does not meet the definition of “hazardous waste” under the RCRA regulations:
  - 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.
- ▶ Non-RCRA generated waste created must have label and SDS.
- ▶ By-product information must already be included on the SDS.

# Host Employer/Staffing Agency Responsibilities

- ▶ The host employer and the staffing agency are joint employers of the worker.
- ▶ Temporary workers are entitled to the SAME protections under the OSH Act as all other covered workers.
- ▶ Both employers must communicate, coordinate, and collaborate in their efforts.
- ▶ Host employer generally has primary responsibility for identifying hazards and complying with worksite specific health and safety requirements:
  - staffing agency also has a duty to ensure a safe workplace.

# HCS Look Ahead

Effective Date	Requirement(s)	Who
<b>June 1, 2016</b>	<p>1) Update alternative workplace labeling – (f)(6);</p> <p>2) Update hazard communication program as necessary – (h)(1); and,</p> <p>3) Provide additional employee training for newly identified physical or health hazards – (h)(3).</p>	Employers

# Hazard Communication Violations

12/1/13–3/31/16  
(federal data only)

**13657 – total  
HCS violations**      Serious – 7629

Willful – 8

Repeat – 322

Other – 5698

1910.1200(e)(1) – written program

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

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

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

1910.1200(f)(5) – container labeling which does not conflict with DOT requirements.

# HCS Guidance from OSHA

1-800-321-6742 (OSHA)

- ▶ Hazard Communication Directive
  - [http://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-02-079.pdf](http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-02-079.pdf)
  
- ▶ OSHA's Safety & Health Topics Page:
  - <https://www.osha.gov/dsg/hazcom/>
  
- ▶ OSHA QuickCards /Fact Sheets /Brief
  - Safety Data Sheets, Labels, Pictograms
  - Comparison of NFPA 704 & HCS 2012 labels
  - Small Entity Compliance Guide



3844

# Current DSG Activities

(from Kathy Landkrohn)

## ▶ Weight of Evidence Guidance

- Explains HCS's weight of evidence analysis requirements
- Provides best practices to follow
- Provides examples of classifications using a weight of evidence analysis for carcinogens, germ cell mutagens, and reproductive toxins
- Provides discussions of the following areas:
  - Conducting an evaluation
  - Hierarchy of weight given to different data
  - In-depth discussion on carcinogens
  - The use of other authoritative evaluations

**Guidance on Data Evaluation  
for Weight of Evidence Determination:**

Application to the 2012 Hazard Communication Standard

# Current DSG Activities

(from Kathy Landkrohn)

- ▶ UN Activities
  - New Hazard Classes/Categories
    - Pyrophoric gases– subcategory of flammable gas
    - Desensitized Explosives– new
  - Flammable Gases – expand Cat 2 to 1B gases
  - Combustible Dust– annex, not new chapter
  - Precautionary Statements – flexibility
  - Small Packages labeling
  - Dangerous goods –  
[http://www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)
  
- ▶ Regulatory Cooperation Council (RCC)
  - May 4–5 @ Canadian Embassy
  
- ▶ Future Joint DOT/OSHA public meeting – June



# Questions??



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