TRAINING REQUIREMENTS UNDER THE REVISED HAZARD COMMUNICATION STANDARD

October 23, 2013
1001 G Street NW, Ste. 500W, Washington, D.C.
(202) 434-4182

www.khlaw.com
Lawrence Halprin is a partner in Keller and Heckman’s workplace safety and health, chemical regulation and litigation practice groups. He is nationally recognized for his work in workplace safety and chemical regulation. His workplace safety and health practice covers all aspects of legal advocacy, including: representing clients in OSHA and MSHA investigations and enforcement actions; providing compliance counseling and training; conducting incident investigations, compliance audits and program reviews; participation in federal (OSHA, MSHA and NIOSH) and state rulemakings and stakeholders processes; bringing and intervening in pre-enforcement challenges to final agency rules; advising on legislative reform and oversight; and participation in the development of national consensus standards under the ANSI process, and TLVs under the ACGIH process.

Mr. Halprin’s engineering and financial background and extensive knowledge of OSHA rulemakings have greatly enhanced his ability to: provide compliance counseling and represent clients in enforcement actions; and evaluate and critique rulemaking proposals and suggest alternative approaches. On behalf of one or more clients, Mr. Halprin has participated in almost every major OSHA rulemaking over the past 25 years as well as numerous Cal-OSHA rulemakings.
Manesh K. Rath

Manesh Rath is a partner in Keller and Heckman’s litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including Staub v. Proctor Hospital and Vance v. Ball State University.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. On developing legal issues, he has been quoted or interviewed in The Wall Street Journal, Bloomberg, Smart Money magazine, Entrepreneur magazine, on "PBS's Nightly Business Report," WAVY-TV and C-SPAN. He was listed in Smart CEO Magazine's Readers' Choice List of Legal Elite.

Mr. Rath has extensive experience representing industry in OSHA rulemakings. He has successfully represented employers—including some of the largest in the country—in OSHA citations, investigations and appellate work before federal OSHA in regions across the country and in state plan states.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

TOPICS TO BE COVERED

• Background
• Compliance
  • Overall compliance strategies and practical compliance measures
  • Labels
  • Chemicals List and SDS
  • Training
• Implementation
  • Deadlines
  • OSHA Enforcement
BACKGROUND (CONTINUED):

✓ Adopting Principles
  • Harmonization (but not uniformity)
  • Maintain existing level of protection (e.g., OSHA HCS) (California?)
  • No testing required by HCS, may rely on existing tests where available
    • EU requires physical hazard testing
    • California following EU?
  • Classification of CMRs treated differently
    • OSHA v. Calif. v. EU?
  • Self-classification except as noted below
IMPLEMENTATION: EFFECTIVE DATE AND TECHNICAL COMPLIANCE DEADLINES

- **EFFECTIVE DATE:** May 25, 2012. May comply with HCS-1994, HCS-2012 or both subject to the following deadlines.

- **COMPLIANCE DEADLINE 1:** December 1, 2013
  - New label and SDS formats and elements

- **COMPLIANCE DEADLINE 2:** June 1, 2015
  - Hazard classification, SDS, and shipped container labels. (Exception: until 12/1/2015, distributors may ship products that were labeled and shipped by manufacturers under the old system prior to 6/1/2015.)
  - Except if early supplier compliance discloses new hazard

- **COMPLIANCE DEADLINE 3:** June 1, 2016
  - Update alternative workplace labeling and hazard communication programs as necessary
  - Provide additional employee training for new information received as a result of the final rule (newly identified physical or health hazards)
Effect Upon Various OSHA Standards and General Duty Clause

- Hazard Communication Standard (HCS)
- Laboratory Standard
- List manufacturer OELs on SDS
- GDC and PELs
- Comprehensive substance-specific standards
- Chemical Emergency Response (HAZWOPER)
- Respirators
- Other PPE
- Flammable Liquids
- Process Safety Management
- Fire Brigades
- Welding, Cutting and Brazing
- Employee exposure and medical records
- General Duty Clause
SCOPE OF COVERAGE

- **Manufacturers and Importers:**
  - Assess inherent hazards (generally not risk) and classify chemical; create SDS (generally inherent hazards) & labels (consider risk)

- **All Employers:** communicate info to their employees and contractor employers about hazardous chemicals they may be exposed to in normal operations or foreseeable emergencies

- **Distributors:** Transmit required info to downstream employers
  - Also responsible for proper label
COMPLIANCE WITH HCS -- ELEMENTS

1. Hazard communication program
2. Labels: ensure incoming containers with hazardous chems have intact labels
3. List of hazardous chemicals
4. SDS:
   a. Maintain SDS received with incoming shipments of haz chems (or obtain one asap)
   b. Ensure SDS are readily available
5. Training: Ensure employees have info and training necessary to prevent exposure and protect them in event of spill or leak, 1910.1200 (b)(3)(v).
WILL ALL HAZARDOUS CHEMICALS REQUIRE A GHS LABEL AND SDS?

• Labels or SDS needed unless chemical qualifies for partial or total exemption
EXEMPTIONS:

• Complete Exemption from HCS
  • Food, drugs or cosmetics for employee consumption/use
  • Food sold, used or prepared in retail store or restaurant (scope of “used” is unclear)
  • OTC drugs and cosmetics packaged for retail sale
  • Drugs in tablet or pill form
  • Consumer product when “consumer” exposure
    • Greater exposure from foreseeable emergency (leak)?
  • Hazardous waste regulated by EPA
  • Tobacco products
  • Wood products not to be further processed (e.g., saw)
SUMMARY FOR NON-MANUFACTURERS:

If a retailer is not also a manufacturer or importer, then:
Focus on the parts of the rule that deal with the workplace program and communication – labels, list, SDS, training.

Technically, almost every business could be treated as a manufacturer ….
COMPLIANCE: HAZARD COMMUNICATION PROGRAM

- Written HCP: Describes how employer meets obligations for labeling, SDS, and training
- List of hazardous chemicals known as present
- Methods used to inform employees – labels, SDS
- Multi-employer worksites: methods to provide needed information to employers of other workers at the site
  - How to access SDS
  - Precautionary measures needed to protect in normal operations and foreseeable emergencies
- Labeling system used in workplace
- June 1, 2016 GHS update required
Even with a complete set of SDSs, employers have been cited for:

- An outdated list
- A list that identified a chemical with a different name than the one appearing on the SDS
- Ongoing updating requirement
### Compliance: Labels

<table>
<thead>
<tr>
<th>Health Hazard</th>
<th>Flame</th>
<th>Exclamation Mark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carcinogen</td>
<td>Flammables</td>
<td>Irritant (skin and eye)</td>
</tr>
<tr>
<td>Mutagenicity</td>
<td>Pyrophorics</td>
<td>Skin Sensitizer</td>
</tr>
<tr>
<td>Reproductive Toxicity</td>
<td>Self-Heating</td>
<td>Acute Toxicity (harmful)</td>
</tr>
<tr>
<td>Respiratory Sensitizer</td>
<td>Emits Flammable Gas</td>
<td>Narcotic Effects</td>
</tr>
<tr>
<td>Target Organ Toxicity</td>
<td>Self-Reactives</td>
<td>Respiratory Tract Irritant</td>
</tr>
<tr>
<td>Aspiration Toxicity</td>
<td>Organic Peroxides</td>
<td>Hazardous to Ozone Layer (Non Mandatory)</td>
</tr>
<tr>
<td>Gas Cylinder</td>
<td>Corrosion</td>
<td>Exploding Bomb</td>
</tr>
<tr>
<td>Gases under Pressure</td>
<td>Eye Damage</td>
<td>Explosives</td>
</tr>
<tr>
<td></td>
<td>Corrosive to Metals</td>
<td>Self-Reactives</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic Peroxides</td>
</tr>
<tr>
<td>Flame over Circle</td>
<td>Environment (Non Mandatory)</td>
<td>Skull and Crossbones</td>
</tr>
<tr>
<td></td>
<td>Oxidizers</td>
<td>Aquatic Toxicity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Acute Toxicity (fatal or toxic)</td>
</tr>
</tbody>
</table>

- Gases under Pressure
- Eye Damage
- Corrosive to Metals
- Skin Corrosion/ Burns
- Explosives
- Self-Reactives
- Organic Peroxides
- Oxidizers
- Aquatic Toxicity
- Acute Toxicity (fatal or toxic)
I N I T I A L  A N D  R E F R E S H E R  T R A I N I N G

• Additional training: whenever a new person or a new physical or health hazard is introduced, not just a new chemical.

• For example, a new solvent with similar hazards to existing chemicals = no new training is required. As with initial training.
  • Technically, under the HCS, the employer need only make employees aware of the hazards to which they will be exposed and how to identify them. However, if PPE is required, then a hazard assessment and training would be specific to the hazardous chemicals requiring PPE.
  • The data sheet for each hazardous chemical must be readily available, and the product must be properly labeled.
  • If a newly introduced chemical presents a new hazard not covered in prior training, the employer must provide new training to exposed employees.

• In the real world, periodic refresher training is generally necessary.

• Consider tort law risk management
IMPLEMENTATION: EFFECTIVE DATE AND TECHNICAL COMPLIANCE DEADLINES

- **EFFECTIVE DATE:** May 25, 2012 - Began official transition period. May comply with HCS-1994, HCS-2012 or both subject to the following deadlines.
  - **COMPLIANCE DEADLINE 1:** December 1, 2013
    - Training on New label and SDS formats and elements
  - **COMPLIANCE DEADLINE 2:** June 1, 2015
    - Hazard classification, SDS, and shipped container labels. (Exception: until 12/1/2015, distributors may ship products that were labeled and shipped by manufacturers under the old system prior to 6/1/2015.)
  - **COMPLIANCE DEADLINE 3:** June 1, 2016
    - Update alternative workplace labeling and hazard communication programs as necessary
    - Provide additional employee training for new information received as a result of the final rule (newly identified physical or health hazards)
IMPLEMENTATION:
OSHA ENFORCEMENT OF HCS-1994

- Commonly issued HCS citations
- Missing or inadequate written program
- Failure to provide training
- Failure to maintain SDS or chemical inventory or mismatches b/n the two
- Failure to label in-plant containers
- Few citations for inadequate MSDS or label
- PPE
- Failure to use recommended PPE or failure to keep it readily available
IMPLEMENTATION: OSHA ENFORCEMENT OF HCS-2012

• Increased emphasis on chemical safety
• OSHA will continue to make HCS one of its most frequently cited standards
• Some greater attention to adequacy of classification, SDS and labeling is likely
Thank you!

Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
(202) 434-4182
rath@khlaw.com

Manesh Rath
rath@khlaw.com

Larry Halprin
halprin@khlaw.com

www.khlaw.com