



MEMORANDUM

Via E-Mail

DATE: October 1, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: OSHA Issues Proposed Rule to Align the Hazard Communication Standard with the United Nations Globally Harmonized System of Classification and Labelling of Chemicals

Yesterday the Occupational Safety and Health Administration (OSHA) issued a proposed rule that would align the Hazard Communication Standard (HCS) with provisions of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The HCS requires chemical manufacturers and importers to evaluate chemical hazards and provide information to subsequent users. According to OSHA, it made a preliminary determination that the proposed HCS modifications “will improve the quality and consistency of information provided to employers and employees regarding chemical hazards and associated protective measures.” The proposed modifications include revised criteria for classification of chemical hazards; revised labeling provisions that include requirements for use of standardized signal words, pictograms, hazard statements, and precautionary statements; a specified format for safety data sheets (SDS); and related revisions to definitions of terms used in the standard, requirements for employee training on labels and SDSs. OSHA is also proposing to modify provisions of a number of other standards, including standards for flammable and combustible liquids, process safety management, and most substance-specific health standards, to ensure consistency with the modified HCS requirements. OSHA intends to schedule an “informal” public hearing on the proposed rule, and it will announce the location and date of the hearing in a future *Federal Register* notice. Comments on the proposed rule are due **December 29, 2009**.

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In the proposed rule, OSHA requests that comments be organized, to the extent possible, around the following issues and numbered questions. OSHA notes that while it “welcomes relevant comments concerning the proposal that fall outside the issue questions raised in this section,” it is “particularly interested in receiving public responses, supported by evidence and reasons, to the following questions”:

Need and Support for the Standard

1. OSHA believes that standardized label elements would be more effective in communicating hazard information; standardized headings and a consistent order of information would improve the utility of SDSs; and training would support and enhance the effectiveness of the new label and SDS requirements. Is this assessment correct? OSHA requests information that reflects on the effectiveness of the proposed modifications to the HCS in protecting employees from chemical hazards in the workplace.

Economic Impacts and Economic Feasibility

2. The preliminary economic analysis (PEA) raises a variety of specific questions and issues:
 - a. Industrial profiles: This covers issues concerning how many employees, establishments, and products would be affected by the proposed standard. OSHA is particularly interested in comments on the number of affected employees, and the number of SDSs that would need revision, by industry.
 - b. Issues with respect to estimated benefits of the proposed standard: OSHA considers three kinds of benefits in this preliminary analysis: (1) benefits associated with preventing injuries, illnesses, and fatalities through clearer and more accessible information; (2) benefits associated with reducing the time that safety and health managers and logistics and emergency response personnel spend on hazardous chemicals through clearer and easier-to-find information; and (3) benefits associated with reducing the time needed to develop and review SDSs because of international harmonization. OSHA is particularly interested in comments on the scope of these benefits; the extent to which they are already being achieved by existing practices; and



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the extent to which they depend on other countries following the harmonization effort.

- c. Issues with respect to the costs and range of costs of the proposed standard: OSHA preliminarily estimated the principal costs of the standard to chemical producers for reclassification of chemicals, remaking SDSs, and redoing labels; and to chemical users for familiarization and program changes for managers and for training exposed employees. OSHA is particularly interested in comments on the extent to which chemical producers may have already met some of the requirements of the standard and the time and professional skills needed for the activities the standard would require.
- d. Issues with respect to economic impacts and feasibility of the proposed standard, including the sensitivity of OSHA's economic feasibility determination with respect to various assumptions.
- e. All other issues with respect to the PEA.

Effects on Small Entities

- 3. OSHA has certified that the proposed standard will not have a significant impact on a substantial number of small entities. Nevertheless, because of the number of small entities affected, OSHA has prepared a voluntary initial regulatory flexibility analysis. Are the estimated costs and impacts on small entities presented there reasonable?
- 4. Are there alternatives to the rule as a whole or specific requirements of the rule that reduce impacts on small entities while still protecting the health of employees and meeting the broad goal of a globally harmonized system?

Environmental Impacts

- 5. OSHA has preliminarily determined that the proposed standard will not have any adverse effects on the environment, and may have positive effects on the environment.



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Hazard Classification

6. OSHA is proposing to adopt all of the physical and health hazard classes in the GHS. Among the physical and health hazard classes, OSHA is proposing to include all hazard categories in the GHS except Acute Toxicity Category 5 for oral, dermal, or inhalation exposures; Skin Corrosion/Irritation Category 3; and Aspiration Hazard Category 2. If you believe that the exclusion of these hazard categories is not consistent with the scope and/or level of protection provided by the current HCS, please describe any recommended changes to this proposal, and the reasons you think these changes are necessary.
7. OSHA has proposed a definition for unclassified hazards be added to the HCS to ensure that all hazards currently covered by the HCS -- or new hazards that are identified in the future -- are included in the scope of the revised standard until such time as specific criteria for the effect are added to the GHS and subsequently adopted by OSHA. Will this approach provide sufficient interim coverage for hazards such as combustible dust? Are there other hazards for which criteria should be developed and added to the GHS?
8. OSHA believes it may be more appropriate to add specific coverage for simple asphyxiants to the standard in the final rule to ensure everyone properly addresses their coverage rather than addressing them under the unclassified hazard definition. This effect is simple and straightforward, and could be addressed in a definition that does not involve extensive criteria. OSHA is requesting comment on this approach. A possible definition would be as follows:

OSHA would also like to solicit comments on specific label elements for simple asphyxiants. No symbol would be required, but the signal word "warning" would be used, with the hazard statement "may be harmful if inhaled." In addition, a precautionary statement such as the following would be required: May displace oxygen in breathing air and lead to suffocation and death, particularly in confined spaces.

All other requirements of the standard that apply to hazardous chemicals would also apply to chemicals that meet this definition. These substances would generally be covered already under the proposed rule as compressed gases, and may also pose other effects such as flammability that would have to be addressed as well. They are also already covered under the existing HCS. Is the definition suggested by OSHA sufficient to cover this effect? Are the label elements suggested appropriate?



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9. To help to ensure that health hazard determinations are properly conducted under a performance-oriented approach, the HCS includes a “floor” of chemicals that are to be considered hazardous based on several cited reference lists. In addition, the existence of one toxicological study indicating a possible adverse effect is considered sufficient for a finding of hazard for any health effect. Under the GHS, there is no floor of chemicals cited, nor is there an across-the-board provision such as the one-study criterion. Instead, specific, detailed criteria are provided for each type of health hazard to guide the evaluation of relevant data and subsequent classification of the chemical. The proposed modifications to the HCS would align the standard to the GHS approach, and thus do not include the floor of chemicals nor the universal one-study rule. Would the proposed detailed criteria provide sufficient guidance for a thorough hazard evaluation?
10. OSHA has edited the chapters in the GHS for classification of physical and health hazards to remove material not directly related to classification and to streamline the text. OSHA anticipates providing the decision logics separately to serve as guidance, but has not included them in the regulatory text. Are there any additions, subtractions, or clarifications of the classification criteria from the GHS that OSHA needs to consider?
11. Certain physical hazard classification criteria (*i.e.*, for self-reactive chemicals, organic peroxides, self-heating chemicals, explosives) either directly reference packaging or quantity, or rely on test methods that reference packaging or quantity. The criteria were developed for transport concerns. Clearly, quantity and packaging can greatly affect safe transport of chemicals that pose hazards such as those listed above. OSHA seeks comments on whether the criteria as stated in the GHS are appropriate for the workplace, however. Does use of these criteria present any obstacles to classification or create any difficulties for suppliers or users of chemicals?
12. The GHS gives countries guidance on a cut-off or concentration limit for chemical mixtures containing target organ toxicity hazards. OSHA is proposing to make the suggested 20 percent concentration limit mandatory so that label preparers are clear on what needs to be done. Please comment on whether this mandatory concentration limit is appropriate.



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Labels

13. The proposal would require pictograms to have a red frame. OSHA believes that use of the color red will make warnings more noticeable and will aid in communicating the presence of a hazard. The GHS gives competent authorities such as OSHA the discretion to allow use of a black frame when the pictogram appears on a label for a package which will not be exported, however. For packages that will not be exported, should the modified standard allow black frames on pictograms, or should the pictogram frame be required to be presented in red?
14. In addition to the pictograms, signal word and hazard statements, GHS labels must include precautionary statements. OSHA is proposing to require the text in the precautionary statements in the GHS to be on HCS labels. The statements are not yet considered to be part of the harmonized text like hazard statements are, however; rather they are included in the GHS as suggested language. OSHA expects that other countries may adopt the codified precautionary statements when they put GHS in place. For example the European Union (EU) has required that labels use the GHS codified precautionary statement text in adapting the GHS. OSHA is proposing to use those currently in the GHS as the mandatory requirements, with the option of consolidating statements where appropriate. OSHA is seeking comment on whether any of these statements should be modified, or if other precautionary statements should be included. In addition, OSHA is seeking feedback on whether it should include the GHS precautionary statements as nonbinding examples, through a non mandatory appendix or guidance, rather than as required statements, or whether OSHA should allow label preparers to develop their own precautionary statements.
15. OSHA has not proposed to require the exploding bomb pictogram or specific precautionary statements for Division 1.4S ammunition and ammunition components because the specified GHS label elements may not accurately reflect the hazards of these materials. Is this sufficiently protective? Are any adjustments to the label elements for Division 1.4S ammunition and ammunition components necessary?
16. In the current HCS, OSHA has a provision that requires labels to be updated within three months of obtaining new and significant information about the hazards. OSHA has not been enforcing this provision for many years, and there has been an administrative stay on enforcement. OSHA is including the provision in this proposal, and inviting comment on it with the intention of including it in the final rule and lifting the stay. Is three



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months the appropriate time interval for updating? Are there any practical accommodations that need to accompany this limit (for example, related to stockpiles of chemicals)?

Safety Data Sheets

17. OSHA is proposing to require that OSHA permissible exposure limits (PEL) be included on the SDS, as well as any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the SDS. OSHA welcomes comments on this approach, along with an explanation of the basis for your position.
18. OSHA is proposing that Section 15 of the SDS be non-mandatory. Section 15 addresses regulatory information concerning the chemical. OSHA is considering requiring the substance specific standards be referenced in this section, which would make Section 15 mandatory. Would employers and employees benefit from having this information in this section of the SDS?

Other Standards Affected

19. OSHA is proposing to align the definitions of the physical hazards to the requirements of the GHS categories in safety standards for general industry, construction, and maritime standards, which either directly reference the HCS or provide information pertinent to the SDSs. In most cases, OSHA has modified the standards to maintain scope and protection. The changes in definitions for flammable liquids Category 1 and 2 and flammable aerosols appear to be more than simply rounding to the nearest significant number, however.
 - *Flammable liquids Category 1 and 2:* The boiling point cut-off for Category 1 is reduced from 100°F (37.8°C) or less to 95°F (35°C) or less, which could shift some liquids from Category 1 to Category 2.
 - *Flammable aerosols:* OSHA is proposing to adopt the GHS method to determine flammability, rather than the method defined by the Consumer Product Safety Commission (CPSC). OSHA's decision to change these definitions to be consistent with the GHS is based not only upon harmonizing its standards with those of other countries that have adopted or may adopt the GHS, but OSHA is also concerned with making its



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standards internally consistent. OSHA believes the methods used to classify these physical hazards are similar enough so that substances that are currently regulated by OSHA would continue to be regulated and that few, if any, changes would result in a shift in regulatory coverage. Would the proposed changes have any impact on your operations?

20. OSHA is proposing to eliminate the term “combustible liquid” in 29 C.F.R. Sections 1910.106, 1910.107, 1910.123, 1910.124, 1910.125, and 1926.155 for liquids with a flashpoint above 100°F. To reflect consistency with the revised HCS where appropriate, OSHA is proposing to add the specific flashpoint criteria. Are there other standards that OSHA should update with the new terminology?
21. OSHA is proposing to modify the language required on signs in substance-specific health standards. OSHA developed the proposed language to reflect the terminology of the revised HCS while, at the same time, providing adequate warning through language that is consistent with the current sign requirements for these chemicals. An added benefit is the hazard warnings on signs specified for these standards will now be consistent throughout OSHA standards. For example, all carcinogens will now bear the hazard statement “MAY CAUSE CANCER.” OSHA believes that providing language that is consistent on both signs and labels will improve comprehension for employees. Does the proposed language on signs accurately convey the hazards?
22. OSHA is proposing to revise the substance-specific health standards’ provisions on labeling for producers and importers of chemicals and substances. Currently in the substance-specific standards OSHA requires specific language on labels for certain chemicals. OSHA is proposing to change these labeling requirements by referring those responsible for labeling to the modified HCS and including in each substance-specific standard a list of health effects that must be considered for hazard classification. The modified HCS will dictate the specific language (*i.e.*, signal word, hazard statement(s), and precautionary statement(s)) that is required on labels through the classification process. OSHA is proposing to maintain specific language for labels on contaminated clothing and waste/debris containers to ensure adequate hazard communication for the downstream recipients, however. How would the removal of required language for labels from substance-specific standards affect your work place? Are there hazard warnings that will be lost that do not have an equivalent hazard or precautionary statement?



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23. In determining the health hazards that need to be considered by manufacturers, importers, and distributors when classifying chemicals regulated by the substance-specific standards, OSHA is proposing to rely primarily on the determinations made by OSHA in each rulemaking, the *NIOSH Pocket Guide to Chemical Hazards* (2005) and the International Chemical Safety Cards, and use as a secondary source the health effects identified by the European Commission (2007). OSHA is proposing to include a health hazard only if it is identified as such by two or more of these organizations. Are there other sources of information that OSHA should consult?
24. OSHA is not proposing to update the electrical standards (general industry 1910 Subpart S and construction 1926 Subpart K) or Explosives and blasting agents (general industry 1910.109 and construction 1926.914). These subparts are “self-contained” in that they do not rely on other OSHA standards for regulatory scope or definitions, but reference external organizations (such as the National Fire Protection Association [NFPA]). OSHA believes that these standards could be updated when the referenced external organizations adopt applicable GHS elements. If OSHA were to change these standards to comply with the GHS, how would this impact your operations?

Effective Dates

25. OSHA has proposed to require that employers train employees regarding the new labels and SDSs within two years after publication of the final rule to ensure they are familiar with the new approach when they begin to see new labels and SDSs in their workplaces.
26. OSHA has proposed that chemical manufacturers, importers, distributors, and employers be required to comply with all provisions of the modified final rule within three years after its publication. Does this allow adequate time to review hazard classifications and amend them as necessary, and to revise labels and SDSs to reflect the new requirements? Would a shorter time frame be sufficient?
27. Are there any other factors that should be considered in establishing the phase-in period?

Compliance Assistance and Outreach

28. OSHA received many comments in response to the questions in the September 12, 2006, advance notice of proposed rulemaking (ANPR) regarding compliance assistance and outreach, and is seeking additional comment in this proposal. Specifically, OSHA is



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interested in responses to the following: What types of materials or products would best assist employers in understanding and complying with the modified HCS? OSHA seeks input to identify the tools that would be most useful to employers and employees, the subjects of greatest interest (*e.g.*, classification criteria, labels, SDSs), and the best means of distributing these materials.

29. OSHA received a number of comments that suggested that a database of chemical classifications should be developed and maintained to assist chemical manufacturers and importers in performing hazard classifications. This approach has been adopted in some other countries. Would such a database be helpful? Who would be responsible for doing the classifications and maintaining them? How would the database be kept aligned with other countries' classifications?

Alternative Approaches

30. OSHA has described alternatives to the scope and application of the proposed rule. These include consideration of allowing voluntary implementation of the GHS; exemptions based on size of the business; adopting some components of the GHS but not others; and not adopting all of the required label elements. OSHA requests comments on these alternatives, with data to support the views expressed. Suggestions and support for other alternatives are requested as well.

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We hope this information is helpful. As always, please call if you have any questions.