

U.S. – OSHA ISSUES ENFORCEMENT GUIDANCE FOR FORMULATORS IMPLEMENTING GHS

On February 9, 2015, the Occupational Safety and Health Administration (OSHA) issued a memo on enforcement guidance regarding the June 1, 2015 deadline for key elements of the Hazard Communication Standard (HCS), commonly known as HCS 2012 or HazCom 2012.

HCS 2012 (29 CFR Parts 1910, 1915, and 1926) implements the United Nations Globally Harmonized System for Classification and Labeling of Chemicals (GHS) in the United States. Countries have the option of adopting different building blocks put forward under GHS.

Under HCS 2012, chemical manufacturers, importers, distributors and employers are required to be in compliance with all the modified provisions of the Hazard Communication Standard by June 1, 2015 (However, there are two exceptions for distributors and employers at 29 CFR 1910.1200(j)(2)(i) and (ii)). The February 2015 enforcement memo can be very helpful for product formulators subject to the HCS 2012 regulation, as it allows for "discretionary enforcement" and gives guidance to mixture formulators on how to manage a situation in which they are not compliant by June 1, 2015.

Classification of hazardous chemicals and the associated development of safety data sheets (SDS) and labels for chemical mixtures often rely upon the receipt of updated SDS from upstream suppliers of raw materials. Because it is likely that in some cases these documents will not be received in time to comply with the June 1, 2015 deadline, OSHA in this memo provides guidance to manufacturers, importers, distributors and employers, including:

- In classifying mixtures, manufacturers and importers must exercise “reasonable due diligence” and “good faith efforts” to obtain the required information from upstream suppliers, as described in the memo.
- If they have done this, enforcement officers should employ “enforcement discretion,” and should allow up to six months to create HCS 2012-compliant SDSs and container labels once a company has received all of the hazard information for the ingredients in a mixture.
- Until then, manufacturers and importers may use HCS 1994 as the standard of compliance.
- HCS 2012 allows distributors to ship chemicals with HCS 1994 labels until 1 December 2015.
- Similar to manufacturers and importers, the memo provides enforcement officers the discretion to allow a de facto grace period for distributors who have not received compliant SDS from suppliers, assuming due diligence and good faith efforts have been made and documented to obtain the needed information.

As part of this process, the documentation of efforts to obtain the required information is crucial, including records of contact with and requests to suppliers.

OSHA also provides five examples of what constitutes as “reasonable diligence” and “good faith efforts” in the guidance:

1. Developed and documented the process used to gather the necessary classification information from its upstream suppliers and the status of such efforts;
2. Developed and documented efforts to find hazard information from alternative sources (e.g., chemical registries);

3. Provided a written account of continued dialogue with its upstream suppliers, including dated copies of all relevant written communication with its upstream suppliers;
4. Provided a written account of continued dialogue with its distributors, including dated copies of all relevant written communication with its distributors informing them why it has been unable to comply with HCS 2012; and,
5. Developed the course of action it will follow to make the necessary changes to SDSs and labels.

Although the OSHA compliance safety and health officer (CSHO) must consider all of the above factors, any combination of these efforts may, depending on the circumstance, be consistent with reasonable diligence and good faith efforts.

Business Impact

By June 1, 2015, chemical manufacturers and importers are required by law to be in compliance with all the modified provisions of HCS 2012. Distributors have until December 1, 2015 to transition to HCS 2012-compliant labels. In addition to the 1 December 2013 deadline, employers are also required to update any relevant labeling as well as their hazard communication program, and to provide additional employee training for newly identified physical or health hazards no later than June 1, 2016.

However, the February 2015 enforcement memo provides guidance that allows for "discretionary enforcement," and gives guidance only applicable to mixture formulators (as opposed to single-substance product manufacturers and importers) on how to manage a situation in which additional data is required from their suppliers for proper mixture classification. In the case that such company is not compliant by the relevant deadline, the documentation of due diligence and good faith efforts, as described in the memo, is essential in order to take advantage of the six-month grace period.

The guidance document can be found at: https://www.osha.gov/dep/enforcement/hazcom_enforcement-memo.html