



Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis LLP	ALBANY, NY	GREENVILLE, SC	MORRISTOWN, NJ	PORTSMOUTH, NH
10701 Parkridge Boulevard	ALBUQUERQUE, NM	HARTFORD, CT	NEW ORLEANS, LA	PROVIDENCE, RI
Suite 300	ATLANTA, GA	HOUSTON, TX	NEW YORK, NY	RALEIGH-DURHAM, NC
Reston, VA 20191	BIRMINGHAM, AL	JACKSONVILLE, FL	OMAHA, NE	RICHLAND, VA
Tel 703 483-8300	BOSTON, MA	LAS VEGAS, NV	ORANGE COUNTY, CA	SACRAMENTO, CA
Fax 703 483-8301	CHICAGO, IL	LONG ISLAND, NY	ORLANDO, FL	SAN DIEGO, CA
www.jacksonlewis.com	CLEVELAND, OH	LOS ANGELES, CA	PHILADELPHIA, PA	SAN FRANCISCO, CA
	DALLAS, TX	MEMPHIS, TN	PHOENIX, AZ	SEATTLE, WA
	DENVER, CO	MIAMI, FL	PITTSBURGH, PA	STAMFORD, CT
	DETROIT, MI	MINNEAPOLIS, MN	PORTLAND, OR	WASHINGTON, DC REGION
				WHITE PLAINS, NY

OSHA Proposes Major Changes to its Hazard Communication Standard

In one of the most significant rulemaking efforts in over a decade, OSHA is proposing to revise its hazard communication standard to align it with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). If finalized, the rule would affect over 5 million business establishments across the country and potentially over 120 million employees. Over 40 million employees would need to be trained on hazard communication under the proposal. OSHA estimates the annualized compliance costs will be almost \$100 million for employers. Annualized benefits are estimated to be approximately \$850 million.

Because of the broad scope of the proposed rule, all employers are encouraged to familiarize themselves with the requirements and participate in the rulemaking process. Comments on the proposal must be submitted to OSHA by December 29, 2009.

OSHA's Existing Hazard Communication Standard

OSHA's existing hazard communication standard (29 CFR 1910.1200) is the most significant "right-to-know" rule in the country regarding hazardous chemicals in the workplace. It requires chemical manufacturers to evaluate the chemicals they produce and determine if they are hazardous. It requires them to inform downstream employers and employees of the hazards of the chemicals through various communication means, such as labels and "Material Safety Data Sheets" (MSDSs). Employers with hazardous chemicals in their workplaces are required to have a hazard communication program and train employees on the hazards of the chemicals present.

Since OSHA developed its hazard communication standard almost thirty years ago, a number of other countries have passed "right-to-know" laws that perform the same function, but contain different requirements particularly with respect to how the key hazard information is communicated. As a result, chemical manufacturers who ship their products internationally must navigate differing and complex hazard communication laws.

In order to reconcile the international differences, the GHS was developed under the auspices of the United Nations. The GHS attempts to standardize the classification of

hazardous chemicals and the communication of those hazards. Once adopted globally, the GHS is expected to improve trade across countries because chemical manufacturers, in particular, will be able to more easily determine the hazards of their products and can communicate those hazards to downstream users through standardized means.

In order to accomplish this globally, however, countries must incorporate the GHS into their own laws, which has proven difficult in some instances. OSHA's proposal to change its hazard communication rules to comport with the GHS is its attempt to come within the fold of this international effort.

Summary of the Proposed Rule

The proposed rule primarily affects three aspects of the existing hazard communication standard. The first two changes affect chemical manufacturers most directly. The third impacts employers that use hazardous chemicals in the workplace.

1. Hazard classification

The proposed rule would change the means that chemical manufacturers currently use to determine whether, and to what extent, a chemical is hazardous. OSHA's existing hazard communication standard requires manufacturers to consider as hazardous any chemical used in the workplace for which there is statistically significant evidence, based on at least one study conducted in accordance with established scientific principles, that acute or chronic health effects may occur in exposed employees. Under the existing standard, a health hazard includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, and sensitizers, among others.

The proposed rule would standardize the classification process used by manufacturers. Manufacturers would be required to classify any health or physical hazards of a chemical. OSHA is proposing to adopt the following hazard classes for health hazards:

<ul style="list-style-type: none">• Acute toxicity• Skin corrosion/irritation• Serious eye damage/eye irritation• Respiratory or skin sensitization• Germ cell mutagenicity• Carcinogenicity	<ul style="list-style-type: none">• Reproductive toxicity• Specific target organ toxicity single exposure• Specific target organ toxicity repeated or prolonged exposure• Aspiration hazard
---	--

For physical hazards, the proposal includes the following classes:

<ul style="list-style-type: none">• Explosives• Flammable gases• Flammable aerosols• Oxidizing gases• Gases under pressure• Flammable solids• Self-heating chemicals• Chemical which, in contact with water, emit flammable gases	<ul style="list-style-type: none">• Oxidizing liquids• Oxidizing solids• Organic peroxides• Corrosive to metals• Self-reactive chemicals• Pyrophoric liquids• Pyrophoric solids
--	---

Within each hazard class, the proposal would require the manufacturer to place the chemical into categories. For example, overall hazard Category 1 for carcinogens represents a “known or presumed human carcinogen,” where the categorization is supported by epidemiological and/or animal data. Category 2 represents a “suspected human carcinogen,” where there is some evidence supporting the carcinogenicity of the chemical, but it is not convincing enough to place the substance in Category 1.

Overall, the proposal requires manufacturers to look at all the evidence associated with a chemical, and place the chemical within these hazard categories. Manufacturers are not required under the proposal to conduct particular testing of the chemicals.

2. Provision of Labels and Safety Data Sheets

Once a manufacturer classifies a hazardous chemical, it must communicate that information to downstream users. The proposed rule would standardize the labels and Safety Data Sheets used to convey this information.

Labels

The existing hazard communication rule requires that labels on hazardous chemical containers include the identity of the hazardous chemical, appropriate warnings that convey the specific physical and health hazards, and the name and address of the chemical manufacturer, importer or other responsible party. Importantly, the existing rule does not require any specific format for the labels.

Under the proposed rule, all labels would include four, new standardized elements:

- **Signal word** – either DANGER or WARNING under the proposal – to denote the severity of the hazard.
- **Pictogram** that includes a symbol along with other graphical elements, such as a border or background color.
- **Hazard statements** describing the hazards associated with a chemical.
- **Precautionary statements** to describe recommended measures that should be taken to protect against hazardous exposures.

Safety Data Sheets

OSHA also is proposing a standardized format for Safety Data Sheets (SDSs), referred to as Material Safety Data Sheets (MSDSs) under the existing hazard communication rule. In the proposal, OSHA provides anecdotal and other evidence that MSDSs can be lengthy and complex, hindering comprehension of the information included. By standardizing the format and provision of information, OSHA believes that employers and employees will better understand the important information conveyed on the SDSs.

OSHA proposes the following content for each SDS, in order:

1. Identification
2. Hazard(s) identification
3. Composition/information on ingredients
4. First-aid measures
5. Fire-fighting measures
6. Accidental release measures
7. Handling and storage
8. Exposure controls/personal protection
9. Physical and chemical properties
10. Stability and reactivity
11. Toxicological information

Each SDS also must have the following headings, to be consistent with the GHS: ecological information; disposal considerations; transport information; and regulatory information. However, OSHA will not enforce this requirement as the information that would be included under these headings is outside OSHA's jurisdiction.

3. Training

Largely as a result of the first two changes, OSHA's proposal would require employers to train employees on the new hazard classifications, labels, and SDSs. OSHA states that "[t]raining is necessary to ensure that employees understand the standardized heading and sequence of information on SDSs." Thus, every employer in the country that currently has a hazard communication program will have to train its employees in the new system, if, or when, the proposed rule is finalized. OSHA estimates that the total annualized cost of training employees would be approximately \$45 million.

* * * * *

OSHA's hazard communication standard is an important rule for employers and employees. It reaches the vast majority of worksites around the country. Employers are encouraged to review the proposal, determine how it will affect their operations, and submit written comments to OSHA. Jackson Lewis attorneys are available to answer questions on the proposal or assist employers in communicating with OSHA on the proposal.