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29 CFR Part 1910 [Docket No. OSHA–2019–0001] RIN 1218–AC93

Hazard Communication Standard AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

https://www.govinfo.gov/content/pkg/FR-2021-02-16/pdf/2020-28987.pdf

Comment period extended to May 19, 2021

Update to GHS Version 7 with specific Version 8 updates (pp 9691 - 9693)

Paragraph (b) Scope and Application

The scope section of the HCS identifies the chemicals that are (and are not) covered by the standard. Existing paragraph (b)(6)(x) excludes **nuisance particulates** from the standard where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered by the standard. OSHA proposes a slight revision to this provision to make clear that nuisance particulates are **excluded if they do not pose any physical hazard, health hazard, or other hazards (i.e., hazard not otherwise classified (HNOC)) covered by the standard.** This proposal would clarify that all hazards covered by the standard must be considered when evaluating nuisance particulates

Paragraph (c) Definitions

OSHA proposes to update three existing definitions and to add eight new terms and definitions to the HCS. In addition, the agency is proposing to eliminate one definition from the standard. OSHA is proposing to add a definition of the term **Bulk Shipment** to the standard. The addition of this definition supports proposed paragraph (f)(5)(ii), which clarifies labeling requirements for bulk shipments of hazardous chemicals. The proposed definition would state that **''bulk shipment'' means any hazardous chemical transported where the mode of transportation (vehicle) comprises the immediate container (e.g., contained in tanker truck, rail car, or intermodal container).** OSHA is proposing to add the term

Combustible Dust to the standard. In updating the HCS in 2012, OSHA did not include a definition of combustible dust because the agency was considering a combustible dust rulemaking and the UNSCEGHS was also considering combustible dust classification and communication issues (see 77 FR at 17705). However, OSHA has not promulgated a combustible dust standard. Since 2012, the UNSCEGHS has adopted a definition; the GHS Rev. 7 defines combustible dust as **''finely divided solid particles of a substance or mixture that are liable to catch fire or explode on ignition when dispersed in air or other oxidizing media'' (definition adopted from ISO/IEC 80079–20–2 as referenced in UN GHS, 2017, Document ID 0060). OSHA has preliminarily determined that this definition is consistent with existing OSHA guidance on combustible dust hazards and proposes to adopt this definition (OSHA, 2020,**

Document ID 0190; OSHA, 2009, Document ID 0255). OSHA has several standards that use the term ''combustible dust,'' but do not define the term (e.g., § 1910.272, Grain Handling Facilities). OSHA believes the proposed definition of the term for the HCS is consistent with the use of that term in those other standards.

OSHA is also proposing to revise the definition of **exposure or exposed**. The definition currently provides, in relevant part, that exposure or exposed **means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard.** OSHA proposes to revise the definition to mean an employee is subjected in the course of employment to a ''hazardous chemical,'' rather than to ''a chemical that is a physical or health hazard,'' to clarify that the HCS covers the hazards of all hazardous chemicals, including those considered to be HNOCs. OSHA is proposing to include three new definitions for the terms Gas, Liquid, and Solid. The agency is proposing to include these terms to align with the GHS Rev. 7 (UN GHS, 2017, Document ID

OSHA is also proposing to add a new definition, **released-for-shipment,** to mean a chemical that has **been packaged and labeled in the manner in which it will be distributed or sold**. This is a new term OSHA is proposing to use in paragraphs (f)(1) and (11) related to updating labels when new hazard information becomes available. OSHA notes that this definition is similar, but not identical to, the definition used by the U.S. Environmental Protection Agency's (EPA's) Pesticide Registration and Classification Procedures regulation, 40 CFR 152.3. EPA defines a product as released for shipment when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or if it is stored in an area where finished products are ordinarily held for shipment. OSHA is not proposing to include chemicals that are stored in an area where finished products are usually held (but not packaged and labeled) in the definition of ''released for shipment'' because there do not appear to be any feasibility issues with ensuring that such chemicals are labeled with the most updated information. The agency is requesting comments on whether the proposed definition is appropriate for application to the HCS. OSHA is also interested in understanding whether the slight differences between OSHA's and EPA's definitions will pose any compliance issues for entities dealing with both OSHA and EPA labeling requirements. See the discussion of the proposed revisions to paragraph (f) for additional details. Paragraph (d) Hazard Classification OSHA is proposing two changes to paragraph (d)(1). OSHA proposes to revise the second sentence of paragraph

OSHA is proposing to add a definition of **Physician or other licensed health care professional (PLHCP) to the standard.** OSHA proposes to define this term as an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows the individual to independently provide or be delegated the responsibility to provide some or all of the health care services referenced in paragraph (i) of the standard. The new definition is necessary in light of OSHA's proposal to replace the phrase ''physician and nurse'' in paragraph (i), trade secrets with the term ''PLHCP'' to be consistent with other OSHA standards that use the term PLHCP, and to better reflect current medical practices. That change is discussed in greater detail in the Summary and Explanation of paragraph (i). OSHA believes the proposed definition of ''PLHCP'' is consistent with the way the agency has defined that term in all health standards promulgated since the bloodborne pathogen standard, 29 CFR 1910.1030, in 1991.

OSHA proposes to add a definition for **immediate outer package** to mean the **first packaging enclosing the container of hazardous chemica**l. While all containers of chemicals must be labeled, as discussed in the Summary and Explanation for paragraph (f), below, OSHA is proposing revised labeling requirements for small containers. Proposed paragraph (f)(12) would relax labeling requirements for small containers, but would require complete label information on the ''immediate outer package.'' For example, in the case of a kit, the container would be whatever surrounds the chemical itself (e.g., a vial), and the immediate outer package would be the first box or package surrounding the container.

Small Containers

OSHA is proposing that all of the small container labeling provisions apply only where the chemical manufacturer, importer, or distributor can demonstrate that it is not feasible to use pull-out labels, fold-back labels, or tags containing the full label information required by paragraph (f)(1**). Proposed paragraph (f)(12)(ii)(A) through (E) would provide that labels on small containers that are less than or equal to 100 milliliter (ml) capacity must include, at minimum: Product identifier; pictogram(s); signal word; chemical manufacturer's name and phone number; and a statement that the full label information for the hazardous chemical is provided on the immediate outer package.** Additionally, proposed paragraph (f)(12)(iii) would provide that no labels are required for small containers of 3 ml capacity or less where the chemical manufacturer, importer, or distributor can demonstrate that any label would interfere with the normal use of the container; however, that same proposed paragraph would state that if no label is required, the container must bear, at minimum, the product identifier. For example, the product identifier (e.g., CAS number) could be etched on a 3 ml glass vial (container) to ensure that the identifier remains fixed to the vial. This type of identification would ensure that the chemical in the small container can be identified and matched with the chemical's full label information. Proposed paragraph (f)(12)(iv) would provide that for any small container covered by paragraph (f)(12)(ii) or (iii), the immediate outer package must include the full label information required by paragraph (f)(1) for each hazardous chemical in the immediate outer package, along with a statement that the small container(s) inside must be stored in the immediate outer package bearing the complete label when not in use. This proposed paragraph would also state that labels affixed to the immediate outer package must not be removed or defaced, as required by existing paragraph (f)(9). OSHA believes that proposed paragraph (f)(12) would provide chemical manufacturers, importers and distributors with flexibility in labeling small containers. The proposed paragraph is consistent with the small packaging examples provided in the GHS Annex 7: Examples of Arrangements of the GHS Label Elements (UN GHS, 2016, Document ID 0197), and would result in better alignment with Health Canada's Hazardous Product Regulations (HPR) small capacity container requirements (Health Canada, 2015, Document ID 0051). Specifically, the HPR, under 5.4(1), provides exemptions from certain labeling requirements (such as precautionary statements) for small capacity containers of 100 ml or less. In addition, under 5.4(2), the HPR provides labeling exemptions for containers of 3 ml or less if the label interferes with the normal use of the hazardous product. OSHA requests comments on the feasibility of the proposed small container labeling provisions. The agency also requests feedback about whether the proposed changes would improve safe handling and storage for chemicals in small containers. Paragraph (g) Safety Data Sheets SDSs provide important safety information to employers and employees on the use of hazardous chemicals in the workplace. Additionally, SDSs provide detailed technical information and serve as a reference source for exposed employees, industrial hygienists, safety professionals, emergency

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responders, health care professionals, and other interested parties. While OSHA believes that information in SDSs has greatly improved with the standardized, 16- section format prescribed in the 2012 updates to the HCS, the agency is proposing two minor changes to paragraph (g) to ensure consistency and accessibility of the SDSs. The proposed revisions to paragraph (g) are confined to paragraphs (g)(2) and (10). The purpose of paragraph (g)(2) is to identify what information must be included on an SDS. The first part of existing paragraph (g)(2) states that the chemical manufacturer or importer preparing the SDS shall ensure that it is in English. However, as permitted by paragraph (g)(1), some chemical manufacturers and importers may obtain, rather than prepare, SDSs. To minimize any potential confusion between paragraphs (g)(1) and (2), OSHA is proposing to revise paragraph (g)(2) by removing the reference to preparing the SDS. The first part of the first sentence in paragraph (g)(2) would be revised to read simply that the chemical manufacturer or importer shall ensure that the SDS is in English. This is a technical clarification intended to ensure consistency with paragraph (g)(1). Paragraph (g)(10) addresses the form and storage of SDSs. The original intent of paragraph (g)(10) was to allow employers alternatives to SDSs within a plant site (see 48 FR 53337). Alternatives to SDSs, such as written operating procedures and manuals, are generally permitted. Existing paragraph (g)(10) also permits employers to design SDSs to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual chemicals. In any case, paragraph (g)(10) requires the employer to ensure that the required information is provided for each hazardous chemical and is readily accessible to employees. However, with the update to the HCS in 2012, OSHA changed the requirements of the SDS from a performance-oriented format to a standardized format. Standardizing the SDS format improved hazard communication by ensuring users could quickly find relevant information (see 77 FR 17596–98). Because SDSs now have a standardized format and are specific to individual hazardous chemicals, they are not permitted to be designed to cover groups of hazards, as currently provided in paragraph (g)(10). Therefore, OSHA is proposing a change to paragraph (g)(10) that would allow SDSs to be stored, rather than designed, in a way to cover groups of hazardous chemicals in a work area. OSHA believes that this change would allow employers flexibility in how they keep SDSs in the workplace while also ensuring that the mandatory 16-section SDS is maintained. The agency is requesting comments regarding whether this proposed revision would require stakeholders to make any significant changes to their current practices.

Paragraph D Hazard Classification

Paragraph (d) Hazard Classification OSHA is proposing two changes to paragraph (d)(1). OSHA proposes to revise the second sentence of paragraph (d)(1) to read that for each chemical, the chemical manufacturer or importer shall determine the hazard classes, and **where appropriate, the category of each class that apply to the chemical being classified under normal conditions of use and foreseeable emergencies.** The language OSHA is proposing to add at the end of that sentence (''under normal conditions of use and foreseeable emergencies'') simply reiterates the scope language currently in paragraph (b)(2) and OSHA's longstanding position that hazard classification must cover the normal conditions of use and foreseeable emergencies. As OSHA explained in its compliance directive for the HCS (OSHA, 2015, Document ID 0007), for example, known intermediates, by-products, and decomposition products that are produced during normal conditions of use or in foreseeable emergencies must be addressed in the hazard classification.

OSHA also proposes to add a new sentence to paragraph (d)(1) stating that the hazard classification shall include any hazards associated with a change in the chemical's physical form or resulting from a reaction with other chemicals under normal conditions of use. OSHA believes this language is necessary because there has been some confusion about whether chemical reactions that occur during normal conditions of use must be considered during classification. The agency's intent has always been to require information on SDSs that would identify all chemical hazards that workers could be exposed to under normal conditions of use and in foreseeable emergencies (see paragraph (b)(2)).

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This issue has been raised, for instance, when multiple chemicals are sold together with the intention that they be mixed together before use. For example, epoxy syringes contain two individual chemicals in separate sides of the syringe that are mixed under normal conditions of use. While OSHA intends for the hazards created by the mixing of these two chemicals to be considered in classification, those hazards need only appear on the SDS (see appendix D to § 1910.1200—Safety Data Sheets, section 3) and not on the label. For additional information, please see the Summary and Explanation for

Paragraph (i) Trade Secrets

This paragraph describes certain conditions under which a chemical manufacturer, importer, or employer may withhold the specific chemical identity (e.g., chemical name), other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture, from the SDS. OSHA is proposing **three significant changes** within paragraph (i)(1) and the paragraphs thereunder.

First, OSHA is proposing to revise paragraph (i)(1) to allow for concentration ranges to be claimed as a trade secret and to specify that it **is section 3** of the SDS from which trade secret information may be withheld.

Second, OSHA is proposing new paragraph (i)(1)(iv), which would require that when an ingredient's exact concentration or concentration range is claimed as a trade secret, the SDS must provide the ingredient's concentration as a concentration range selected from a **prescribed list of ranges**. These ranges are in proposed paragraphs (i)(1)(iv)(A) through (M) as follows: **(1) From 0.1% to 1%; (2) from 0.5% to 1.5%; (3) from 1% to 5%; (4) from 3% to 7%; (5) from 5% to 10%; (6) from 7% to 13%; (7) from 10% to 30%; (8) from 15% to 40%; (9) from 30% to 60%; (10) from 45% to 70%; (11) from 60% to 80%; (12) from 65% to 85%; and (13) from 80% to 100%.** These ranges are consistent with those used in Canada, first described under the WHMIS 1988 Controlled Products Regulation (CPR) and re-implemented in 2018 under the HPR (Canadian Gazette II, 2018, Document ID 0101). Using the same concentration ranges as Canada, one of the U.S.'s major trading partners, is part of the two countries' efforts through the Regulatory Cooperation Council to align hazard communication to the greatest extent possible. OSHA has received numerous inquiries about the use of trade secrets for concentration ranges (Colau, 2017, Document ID 0098; Nelson, 2017, Document ID 0099). Although chemical manufacturers and importers are permitted to use concentration ranges rather than an exact percentage on the SDS when there is batch-to-batch variability in the production of a mixture or for a group of substantially similar mixtures with similar chemical composition, OSHA does not currently allow trade secret status for a concentration range (see 77 FR 17731). However, in response to feedback from stakeholders who have indicated that there are instances where a concentration range is also a trade

secret, OSHA has preliminarily determined it is appropriate to permit concentration ranges to be claimed as trade secrets as long as the ranges prescribed in proposed paragraphs (i)(1)(iv)(A) through (M) are used (Nelson, 2017, Document ID 0099; Colau, 2017, Document ID 0098).

Third, proposed new paragraph (i)(1)(v) would require that the concentration range used on the SDS be **the narrowest range possible**. This proposed paragraph would also provide that if the actual concentration range falls between 0.1% and 30% and does not fit entirely into one of the prescribed ranges in proposed paragraphs (i)(1)(iv)(A) through (G), a single range created by the combination of two applicable consecutive ranges between (i)(1)(v)(A) and (G) may be disclosed instead, provided that the combined concentration range does not include any range that falls entirely outside the exact range in which the ingredient is present. For example, a chemical manufacturer that wishes to claim the concentration of a specific ingredient (e.g., 2.5%) as a trade secret would have to use the prescribed range in proposed paragraph (i)(1)(iv)(C) of 1% to 5%. If the ingredient is in the mixture at a concentration range of 0.9% to 2%, then the chemical manufacturer could combine the prescribed ranges in proposed paragraphs (i)(1)(iv)(B) and (C), resulting in a range of 0.5% to 5% on the SDS. If the ingredient is in the mixture at a concentration range of 5% to 7%, the chemical manufacturer would have to use the range in proposed paragraph (i)(1)(iv)(D) of 3% to 7%, because it is narrower than the range in proposed paragraph (i)(1)(iv)(E) of 5% to 10%. OSHA is requesting comment