

MAY 20, 2024 | OSHA RULEMAKINGS & STANDARDS

What You Need to Know About OSHA's Updated Hazard Communication (Chemical Right-to-Know) Standard

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On May 20, 2024, OSHA published a significant revision to the [Hazard Communication Standard](#) (HCS) in an effort to better align the HCS with the United Nations' Globally Harmonized System of Classification, primarily Revision 7 (GHS). This final rule also seeks to clarify ambiguities left unresolved by the last set of revisions to the HCS and to improve alignment with other federal agencies and international trading partners. 

In making these changes, OSHA has created a host of new regulatory hurdles for chemical manufacturers, importers, distributors, and downstream users. The final rule becomes effective July 20, 2024, but offers a grace period during which the regulated community may comply with the final rule or the prior version of the HCS.

CMC sat down with [Maureen Ruskin](#), the now-former OSHA official who led the effort to align the HCS with the GHS, to discuss the changes in this final rule. Our conversation informed this Client Alert, which begins with an overview of the biggest impacts the final rule will have on the regulated community and the timeline for coming into compliance with the new and changed requirements, provides a detailed discussion of what the final rule says and means, explores significant changes between the language of the proposed rule and what was actually adopted in the final rule, and explores tips and strategies for compliance.

Implications for the Regulated Community

The final rule impacts nearly every aspect of hazard communication – from chemical classification to the content of Safety Data Sheets (SDSs) – and everything in between. The most critical changes include the following:

Manufacturers/Importers

Manufacturers/Importers will be the most affected by OSHA's updates to the HCS. Manufacturers will need to review their chemical classifications and assess whether any of OSHA's changes made to the HCS criteria, detailed below, will require changes to their chemical labels and/or SDSs. OSHA does not expect that the amended HCS will result in any major changes in overall coverage under the standard, nor would OSHA expect

any changes in the classification of the *health* hazards of existing chemicals. However, there may be some shifts in classification for some of the *physical* hazards associated with aerosols, chemicals under pressure, and desensitized explosives.

Manufacturers/Importers will also need to review their labels to ensure that the required information has been updated according to the new Appendix C in the standard, which includes some impactful updates to the mandatory precautionary statements.

Finally, Manufacturers/Importers must review the SDSs for all of their hazardous chemicals and ensure they follow the updated requirements.

Distributors

OSHA anticipates that Distributors will continue to rely on the SDSs and labels provided by the manufacturer. Should a Distributor relabel and replace the manufacturers' or importers' names with their own name, they must comply with all the same HCS requirements as the Manufacturers/Importers.

Notably, OSHA has not provided a separate compliance date for Distributors, as it had done in the prior update to the HCS in 2012. This is because OSHA updated (f)(11), which provides an option for Distributors to either change the labels on the containers that are already packaged for shipment or to maintain the old labels and provide the downstream users with the updated labels.

Downstream Users / Employers

Employers, as necessary, will need to update their workplace labels, hazard communication program, and training if there are new hazards or new hazardous chemicals introduced into the workplace.

The Latest Changes to OSHA's HazCom Standard

OSHA made numerous changes to the HCS in this new final rule. Below is a detailed description of the revisions to the standard:

Paragraph (c) – Definitions

OSHA updated and added several new definitions. OSHA has added definitions related to classifications, including definitions for a chemical's physical state (*i.e.*, gas, liquid, or solid). The agency finally added a definition for combustible dust, albeit a generic one. OSHA also added several new definitions related to new or updated requirements for labeling. These definitions include "immediate outer package" which is  incorporated into provisions for small container labeling at (f)(12), "Released for shipment," which is incorporated into the updates to (f)(11) (Label Updates), and "Bulk Shipment," which is incorporated into the updates to (f)(5) (Transportation). Notably, the definition of "Bulk Shipment" under the HCS is designed to be narrower than DOT's definition of bulk packaging (*see* 49 CFR 171.8).

Paragraph (d) – Classification

OSHA updated (d)(1) which articulates the requirements for chemical manufacturers and importers for the

classification of chemicals. In the proposed rule, OSHA made two changes in an attempt to clarify that classification applies to chemicals under normal conditions of use and to foreseeable emergencies including changes in the chemicals' physical form. OSHA claims that this change was intended to reiterate the scope language under (b)(2) and to alleviate confusion about whether hazards created by chemical reactions that occur during normal conditions of use must be considered during classification and whether this information should be placed on the label and/or the SDS. OSHA received volumes of comments on this change, both supportive and critical. OSHA determined that the proposed language lacked the clarity needed and updated the language to better articulate the clarification. In the final rule, OSHA revised (d)(1) by (1) removing the reference to "normal conditions of use and foreseeable emergencies" and replacing it with the term "intrinsic properties" and (2) breaking down (d)(1) into (d)(1)(i) and (d)(1)(ii) to differentiate the chemical hazards as shipped (including changes in physical form) and chemical reaction products (known or reasonably anticipated). OSHA believes that this addresses the concerns of most commenters and provides the necessary guidance on the information that needs to be on the label and the SDS.

To better align the HCS with GHS, OSHA also updated a number of chemical hazard classes and added one additional hazard class. See the discussion below on the updates to the Appendices.

Paragraph (e) – Written Hazard Communication Program

No changes under this paragraph other than correcting a reference in (e)(4).

Paragraph (f) – Labeling

OSHA made a number of changes to the labeling requirements. The first change under (f)(1) is that OSHA specifies that hazards identified under (d)(1)(ii) need only be disclosed on the SDS. OSHA has also specified that the responsible party's address and telephone number need to be a U.S. address and telephone number.

OSHA relocated all requirements for transportation to (f)(5). OSHA moved C.2.3.3 to (f)(5)(iii) and updated the language to indicate that when a DOT pictogram (or placard) is on the container then the pictogram for the same hazard is not required. Previously OSHA specified under C.2.3.3 that the GHS pictogram "shall not appear," but with updates to DOT regulations, the GHS pictogram is now allowed. OSHA also codified under (f)(5)(ii) OSHA's long-standing relief for labeling of chemical containers where the container is the mode of transportation. Under these new requirements, the label for bulk shipments must be on either the immediate container (the mode of transportation) or with the shipping papers, bills of lading, or electronic means (under the agreement of the receiving entity).

OSHA provides relief for updating labels when a container has already been released for shipment at (f)(11). When a manufacturer is required to update labels (after they become aware of any significant information regarding the hazards of a chemical), they are required to update the label within six months. However, OSHA is permitting manufacturers who have already packaged and labeled the containers for shipment to continue to use the older labels already on the containers, so long as they also provide the updated label for each individual container shipped.

Finally, OSHA has added a new subparagraph (f)(12) – small container labeling. This provision indicates how manufacturers/importers or distributors can label small containers if they cannot feasibly fit the full label

information on the label (this includes demonstrating that the use of fold-out, pullout, or tags is not a feasible option). OSHA has listed the required information that must be on the label for an immediate container that has a capacity of 100 ml or less, as well as the information needed on the immediate outer package. OSHA further provides a special consideration for containers with a capacity of 3 ml or less.

Paragraph (g) – Safety Data Sheets

OSHA only made minor editorial changes in paragraph (g). The changes affecting the SDSs were codified in Appendix D (see below).

Paragraph (i) – Trade Secrets

OSHA made some substantial changes in this paragraph. First, it amended the standard to allow manufacturers/importers to claim trade secrets not only for the exact percentage of an ingredient but also for a concentration range. However, OSHA has put some constraints on this use of trade secrets for the concentration or concentration range. If the manufacturer/importer is claiming the concentration or concentration range as a trade secret, then they must use prescribed ranges. These ranges are the same ranges used by Health Canada. This provides relief for manufacturers/importers whose products are sold in both countries.

Appendix A, Health Hazards

While OSHA made some significant changes to several of the health hazard classes, OSHA does not expect major (if any) changes in the classification of existing chemicals. These changes fell into a few buckets.

In the first bucket, to maintain alignment with the GHS, OSHA updated the health hazard definitions. The definitions were modified to be more general and neutral with respect to test guidelines. In the second bucket, OSHA updated the hazard class for skin corrosion/irritation to reflect GHS Revision 8 as this updated the criteria to better reflect the advances of non-animal testing. As indicated above, OSHA does not expect manufacturers/importers to do any retesting, and the classification of existing chemicals is expected to remain unchanged. OSHA also updated the guidance on the consideration of acid/alkaline reserve for extreme pHs (< 2 or > 11.5) under the hazard class Serious eye damage. In the last bucket, OSHA made general updates to align with GHS Revision 7. Most notably, OSHA updated the acute toxicity hazard class to include clarification on the use of data from human experience, generally updated the serious eye damage/eye irritation hazard class, and provided extensive clarification on how to classify chemicals corrosive to the respiratory tract.

Appendix B, Physical Hazards

OSHA made some extensive changes to several physical-hazard hazard classes. Here, OSHA *does* expect that there may be some changes in the classification of hazards but does not expect new hazardous chemicals to be identified. The agency states that these changes are mostly a realignment of hazards to improve the communication of these hazards. The main changes can be found in flammable gases, aerosols, oxidizing solids, and a new hazard category — desensitized explosive.

Flammable Gases – OSHA has aligned with Revision 7 and has updated the chapter to include pyrophoric gases

and chemically unstable gases. Additionally, OSHA has added a new subcategory, subcategory 1B which meets the criteria of subcategory 1A but has a lower flammability limit or a low fundamental burning velocity.

Aerosols (formerly Flammable Aerosols) – OSHA has updated the chapter to align with Revision 7 and has added non-flammable aerosols as category 3. OSHA declined to use the criteria as presented in Revision 8 for non-flammable aerosols since there appeared to be an inconsistency between categories 2 and 3. However, OSHA did adopt Revision 8’s criteria for “chemicals under pressure” into the aerosol.

Oxidizing Solids – OSHA updated the oxidizing solids hazard class to include the new testing criteria. Though indicated that data from either the old test (test O.1) or the new test (test O.3) can be used in classification.

Desensitized Explosives – This is a new hazard class that includes chemicals with explosive properties that have been suppressed.

Appendix C, Allocation of Label Elements

OSHA updated the instructions in Appendix C.1-C.3 to provide additional guidance on how to apply the label elements to the label. Some of the notable changes include that OSHA will allow the use of the exclamation point for Hazard Not Otherwise Classified to align with Canada’s requirement for these hazards. OSHA has also clarified that a pictogram should appear once on the label. The agency further explained that minor textual variations in precautionary statements are permitted as long as the message is not diluted or compromised. Finally, OSHA has provided guidance on the use of medical statements where multiple medical statements have been triggered. 

OSHA updated C.4, the series of tables for the label requirements by hazard class and category. These tables were updated to reflect the changes in Appendix A and B, clarify acceptable statements for corrosion to the respiratory tract, and update precautionary statements to maintain alignment with Revision 7.

Appendix D, Safety Data Sheets

OSHA has amended the minimum requirements for an SDS to align with Revision 7, reflect the changes in (d)(1), and clarify implementation concerns from the 2012 update of the HCS. OSHA has updated the instructions to clarify that each section must contain all specified information, but the preparer has flexibility on how it is presented. The following are updates by section of the SDS:

- Sec. 1 (Identification) – OSHA has indicated that the address and telephone number must be in the U.S.
- Sec. 2 (Hazard Identification) – OSHA has updated section 2 to mirror the changes in (d)(1) indicating that both (d)(1)(i) and (d)(1)(ii) must be included.
- Sec. 3 (Composition) – OSHA has specified that a unique identifier for each ingredient must be included, though this can be claimed as a trade secret. OSHA has also updated the instructions for the trade secrets to mirror the update in paragraph (i).
- Sec. 8 (Exposure Control/Personal Protection) – OSHA has clarified that OSHA PEL, ACGIH TLV, or other exposure limits must be included for ingredients or constituents listed in section 3.
- Sec. 9 (Physical and Chemical Properties) – OSHA has updated the list of chemical properties to align with Revision 7. OSHA has acknowledged that there may be instances where the classification under the HCS

and classification for storage purposes may differ when the boiling point is calculated under 29 CFR 1910.106. OSHA has provided guidance on how this should be presented on the SDS.

- Sec. 10 (Stability and Reactivity) – Clarifying that hazards associated with foreseeable emergencies should be included in section 10.
- Sec. 11 (Toxicological Information) – Updated to align with Revision 7.

Changes from the Proposal to the Final Rule

OSHA made changes throughout the standard between the Notice of Proposed Rulemaking version we saw many months ago and the version published in the Federal Register on May 20, 2024, and states that many of them were intended only to correct outdated references. However, several changes were significant.

As discussed above, OSHA clarified (d)(1), determining that the language in the proposed rule lacked the clarity needed, and updated the language to better articulate the agency's intent. In the final rule, OSHA changed the language adopted at (d)(1). First, it removed the reference to "normal conditions of use and foreseeable emergencies" and instead replaced it with the term "intrinsic properties." Next, it further broke down (d)(1) into (d)(1)(i) and (d)(1)(ii) to differentiate the chemical hazards as shipped (including changes in physical form) and chemical reaction products (known or reasonably anticipated). OSHA also made some corresponding changes throughout the standard to clarify whether (d)(1)(i) and/or (d)(ii) apply.

For labeling, in (f)(1), OSHA also removed the proposed requirement to add the date that the chemical container was released for shipment and clarified in (f)(11) that the labeling relief for containers already released for shipment is voluntary and manufacturers, importers, and distributors can relabel these containers.

Under trade secrets, OSHA amended (i)(1) to allow ranges narrower than the prescribed ranges.

OSHA increased the proposed compliance deadlines for substances by six months and mixtures by one year. OSHA also amended the final rule to give downstream users more time to update their workplace programs (workplace labels, written communication program, and training), where necessary. OSHA will also allow for the regulated community to comply with either the final rule or the previous version during the transition period.

In Appendix A, OSHA made two significant changes to the proposal. First, OSHA opted to finalize the alternative to use revision 8 for A.2 Skin corrosion/irritation to better articulate the use of non-animal test methods. OSHA has also added several notes to better articulate how to classify chemicals as "corrosive to the respiratory tract." Corresponding notes were added to Appendix C.

In Appendix B, OSHA opted to finalize the alternative of adding a new subcategory in B.3 "Chemicals Under Pressure" introduced in Revision 8. OSHA also added the label elements for "Chemicals Under Pressure" in C.4.16 of Appendix C.

Implementation Timing

OSHA has established a phased set of deadlines for compliance with the final rule, as follows:

Compliance Date	Requirement	Who
January 19, 2026	Update labels and SDSs for substances	Chemical manufacturers, importers, distributors, and employers
July 20, 2026	Update workplace labels, hazard communication program, and training as necessary for substances	Employers
July 19, 2027	Update labels and SDSs for mixtures	Chemical manufacturers, importers, distributors, and employers

January 19, 2028	Update workplace labels, hazard communication program, and training as necessary for mixtures	Employers
May 20, 2024	May comply with either 29 CFR 1910.1200 (this final standard), the current standard, or both	Chemical manufacturers, importers, distributors, and employers

Top 3 Compliance Strategies for the Updated HazCom Standard

Although the final rule provides a brief grace period for coming into compliance with its new and changed requirements, given the breadth and complexity of the new requirements, especially around chemical labeling, the regulated community should begin compliance efforts right away. Here are our top three tips and strategies for coming into compliance with the GHS final rule:

1. Pick your team: Every aspect of your hazard communication program needs to be reassessed and likely updated. **Designate and train a team knowledgeable about the chemicals you manufacture, distribute, or use to become subject matter experts on the changes brought by the new Final HCS.** That team can coordinate with experienced OSHA counsel to bring your organization into compliance with the new HCS requirements.
2. Evaluate your chemicals and your program: Compliance with the updated HCS may require, depending on your business, **a reanalysis of your chemical classifications, labels, SDSs, a written hazard communication program, and training.** The compliance dates for the new and changed requirements may seem far off now, but when you consider the number of elements that must be addressed, there is not a lot of runway. Get started on those analyses as soon as possible.
3. **Evaluate open legal issues:** As your team works to analyze your chemicals and program, consult with experienced OSHA counsel to help with the new legal questions created or left unanswered by the new final rule. For example, OSHA expects manufacturers to classify chemicals, in part, based on known or reasonably

anticipated downstream uses of the chemical. But what does OSHA consider known or reasonably anticipated? The new final rule seeks to better align U.S. hazard communication with those of our international trade partners, but there are still country-to-country differences, and the revised HCS is far less stringent than the EU's chemical regulations. How are manufacturers and importers to navigate these remaining differences? These are just a couple of examples of legal minefields posed by the rule. A trusted legal advisor can help navigate such issues.

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Please contact [Valerie Butera](#) and [Kate McMahon](#) with any questions about the new updated Hazard Communication Standard, or if a call would be helpful to talk through the new rule and the implications for your organization.