

## Clarifications to CPL 02-02-079, Inspection Procedures for the Hazard Communication Standard (HCS 2012) September 12, 2016

This memorandum provides information on issues raised since the publication of the Inspection Procedures for the Hazard Communication Standard (HCS 2012) compliance directive, CPL 02-02-079. This memo serves primarily to assist the field staff in clarifying the requirements of HCS 2012.

### **Question 1: Has OSHA changed the meaning of the phrase "exposed under normal conditions of use or in a foreseeable emergency?"**

Response: The Agency's interpretation of that phrase has been stated previously and is applicable to HCS 2012. The following reiterates OSHA's interpretation: The terminology "exposed under normal conditions of use or in a foreseeable emergency" excludes substances for which the hazardous chemical is inextricably bound or is not readily available, and, therefore, presents no potential for exposure. ("Exposure" includes accidental or possible exposure, see definition under paragraph (c) of the standard). Further, employees such as office workers or bank tellers who encounter chemicals only in "non-routine," isolated instances are not covered. However, an employee in a graphic arts department who "routinely" uses paints, adhesives, etc., would be covered by the HCS.

### **Question 2: When do all containers of hazardous chemicals shipped by a manufacturer or importer have to be HCS 2012-compliant labeled?**

Response: If after June 1, 2015, the manufacturer or importer can demonstrate that it exercised reasonable diligence and good faith efforts to obtain hazard classification information from the upstream supplier(s) but for circumstances beyond its control, it has not received the necessary information to develop HCS 2012-compliant labels, it may continue to ship containers downstream provided the containers are HCS 1994-compliant labeled. Even though a manufacturer or importer may have built up a substantial inventory, over time, containers of hazardous chemicals that were packaged for shipment prior to June 1, 2015 should become less of a labeling burden to manufacturers and importers as inventory is depleted. Therefore, all containers of hazardous chemicals shipped by a manufacturer or importer must be HCS 2012-compliant labeled by June 1, 2017. **Remember: Employers are still required to train employees on the new label elements.**

### **Question 3: Are end-user employers required to re-label existing stock of containers?**

Response: End users (i.e., employers) with existing stock or who have received shipped containers of hazardous chemicals with HCS 1994 labels (even after the June 1, 2016 final effective date) are allowed to maintain and use those containers with HCS 1994 labels. The end user must not remove or deface any chemical containers with HCS 1994 labels, unless the end user immediately marks the containers with workplace labeling. If an end user receives HCS 2012 labels from an upstream supplier for its existing stock, it is advisable to affix the HCS 2012 label over the HCS 1994 label, although it is not required. The end user is responsible for training its workers regarding the new label elements.

### **Question 4: Will OSHA allow an HCS pictogram for Hazards Not Otherwise Classified (HNOC) on a label or safety data sheet?**

Response: It is stated currently in CPL 02-02-079 that "the manufacturer, importer or distributor may include hazard symbols on the label or SDS for HNOCs as long as that symbol is not an HCS pictogram and does not contradict or cast doubt on the information that is required." This information has been revised and is now replaced with the following guidance: The manufacturer, importer, or distributor may include non-HCS/GHS hazard symbols on the label or SDS for HNOCs as long as that symbol does not contradict or cast doubt on the information that is required. OSHA considers use of any HCS pictograms,

except the exclamation mark pictogram, to indicate the hazards of an HNOC as contradicting or casting doubt on the required information. OSHA considers the exclamation mark acceptable for HNOCs because it conveys more general hazard information. OSHA will permit use of the exclamation mark pictogram for HNOCs if the label also indicates that the pictogram is being used for a hazard not otherwise classified (e.g., the words "Hazard Not Otherwise Classified" or "HNOC" appear below the exclamation mark pictogram). However, the exclamation mark pictogram may only appear once on a label; if it already appears as a required pictogram for a classified hazard, it may not appear a second time as supplemental information for the HNOC.

**Question 5: What ingredients must be listed in sections 3 and 8 of the safety data sheet?**

Response: CPL 02-02-079 currently states that "the list of constituents in sections 3 and 8 must be the same." This statement has been clarified and is replaced with the following guidance: If a chemical ingredient is listed in section 3 of the SDS, it only needs to be listed in section 8 if there is a PEL, TLV or other occupational exposure limit (OEL). However, if a chemical ingredient is listed in SDS section 8, then OSHA would expect to see the same ingredient listed in SDS section 3. OSHA does not require that all chemical ingredients be listed in SDS section 8 – just those that are identified in section 3 and that have PELs, TLVs, and/or OELs.

**Question 6: Is "Trade Secret" the only compliant wording allowed on a safety data sheet to indicate that an ingredient is being withheld per the trade secret provisions of HCS?**

Response: In addition to the use of "trade secret," OSHA would also accept language such as "confidential," "confidential business information," or "proprietary" when indicating on an SDS that information is being withheld when that information is subject to trade secret provisions of HCS. See 77 FR 17474, 17738 (Mar. 26, 2012).