OSHA HazCom 2024

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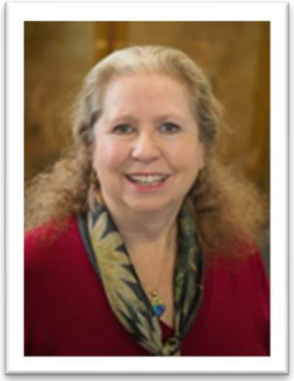
Presented By



Adele L. Abrams is an attorney, Associate Safety Professional (ASP) and Certified Mine Safety Professional (CMSP) who is president of the Law Office of Adele L. Abrams P.C., a multi-attorney firm with offices in Beltsville, Maryland, Denver, Colorado, and Charleston, West Virginia. The firm represents employers in OSHA and MSHA litigation nationwide, and her firm also handles employment law matters in a large number of states. Abrams and her firm colleagues provide employment and safety law consultation, safety audits, industrial hygiene assistance, and training services to companies in a variety of industries.

She is a member of the Maryland, D.C. and PA Bars; the U.S. District Courts of Maryland, D.C., and TN; the U.S. Court of Appeals, DC Circuit 3rd Circuit, and 4th Circuit; and the United States Supreme Court. She also serves on the adjunct faculties of the Catholic University of America in Washington, D.C., and the University of Colorado-Boulder, where she teaches on employment, labor and occupational safety law.

Adele is a member of EMLF, IMA-NA and NSSGA. She is an active member of the American Society of Safety Professionals, and of the National Safety Council, where she was awarded the Distinguished Service to Safety Award (DSSA) in 2017. Abrams has coauthored several textbooks on employment law, occupational and mine safety and health, and is a regular columnist on safety law issues for multiple magazines.

Overview: HazCom & GHS

- OSHA has issued new final rule to revise 29 CFR 1910.1200 (Hazard Communication Standard)
  - Responsibilities apply to:
    - Chemical manufacturers, importers and distributors
    - Employers
    - Employees
  - Final Rule was published in 5/20/24 *Fed. Reg*. adopting 7th Revision of UN GHS standard
- *Overall benefits of globally harmonized system*:
  - Promotes safer transportation, handling and use of chemicals;
  - Improves understanding of hazards;
  - Increases compliance and reduces costs for companies involved in international activities;
  - Helps protect workers, consumers and potential exposed populations around the globe.

OSHA – Global Harmonization

- GHS specifies warnings and format
- GHS makes method of communication and information transmitted more consistent
- GHS system is based on international negotiations and OSHA plans to learn from implementation experience of other nations
- New rule does NOT reduce level of protections afforded under original HazCom standard (29 CFR 1910.1200)

Overview: Key Terms

- Globally Harmonized System (GHS): defines and classifies the hazards of chemical products, and communicates health & safety info on labels and safety data sheets (SDSs)
  - Goal is that same set of rules for classifying hazards and same labeling and SDS formats would be used worldwide (U.N. developed GHS – different sections address workplace, transportation, environment, consumer safety)
- HAZWOPER: OSHA's Hazardous Waste Operations and Emergency Response standards for general industry & construction – aimed at minimizing worker injuries/illnesses resulting from potential exposures to hazardous substances

2024 Final Rule

- 2024 changes to 29 CFR 1910.1200 follow the 2012 initial adoption of GHS (3rd edition)
- The 2012 change was first major revision to the rule since its inception in 1983 (for the chemical industry),
  - OSHA expanded it a few years later to cover all employers with hazardous chemical exposures or use.
- OSHA's HazCom standard is historically one of the most frequently cited standards and was #2 in FY 2023, when over 3,200 HazCom citations were issued.
- HazCom compliance is very paperwork intensive and each employee must have documented training on its provisions.
- It also interfaces to some degree with OSHA's HAZWOPER, Process Safety Management, and Emergency Action Plan rules, as well as the EPA's Risk Management Program requirements, where those also apply to an employer or worksite.

Final Rule Implementation

- 2024 OSHA rule's provisions will take effect on July 19, 2024.
- There are staggered dates for compliance by chemical manufacturers, importers, and distributors evaluating substances (January 19, 2026), and for mixtures (July 19, 2027).
- For employers, OSHA is providing six (6) months BEYOND those dates (July 20, 2026 for substances; January 19, 2028, for mixtures) to:
  - update any alternative workplace labeling,
  - update their written hazard communication program, and
  - provide additional employee training for newly identified physical, health or other hazards as identified or reclassified under the final rule.

✓ Until those effective dates, OSHA will accept compliance with either the current rule or the new standard.

Revisions to Note

- 2024 rule's focus is on improving the amount and quantity of information on labels (especially small product labels) and to enable workers and first responders who use theses sheets as a reference for first aid, personal protective equipment, and emergency protocols, to react more quickly in an emergency.
- It includes 12 new definitions for the terms "bulk shipment," "combustible dust," "gas," "immediate outer package," "liquid," "physician or other licensed healthcare professional (PLHCP)," "released for shipment," and "solid."
- It includes revised definitions for "exposure" and "exposed," "hazardous chemical," and "physical hazard."
- OSHA also removed pyrophoric gas from its definitions
- Final rule now aligns with EPA for "released for shipment" definition and with DOT requirements for bulk shipments

More Revisions to Watch

- Special labeling provisions for 3 ml and 100 ml containers (similar to Canada's WHMIS)
- Mandatory use of prescribed concentration ranges when exact percentages are claimed as trade secret
- Appendix A updates align with revised health hazard definitions in GHS 7th Rev. including skin corrosion/irritation and eye damage chapters (non-animal test methods from GHS 8th Rev. added)
- Appendix B update aligns with GHS 7th Rev. for physical hazards, including flammable gases, desensitived explosives, and aerosols
- Appendix C update aligns with GHS 7th Rev. for labeling, including new hazards, guidance, hazard and precautionary statements
- Appendix D aligns with GHS 7th Rev. for SDSs, including revisions to sections 2, 3, 9 and 11

Hazard Classifications

- The hazard classifications for a substance or mixture must consider the chemical's intrinsic properties, including any change in chemical physical form or chemical reaction products associated with known or reasonably anticipated uses or applications.
- This may require manufacturers to better anticipate downstream chemical use.
- There is a new hazard class (desensitized explosives) and new hazard categories (unstable gases and pyrophoric gases in the Flammable Gas category, and nonflammable aerosols in the Aerosols class).
- The rule also includes revised health hazard statements and precautionary statements depending on the chemical involved, and revisions to the terms "skin corrosion/irritation" and "serious eye damage/eye irritation" chapters of the hazard classes.

Impact on SDSs & Labels

- Only certain products (aerosols, desensitized explosive, and flammable gases) will be impacted by the new classification criteria
- Affected establishments must update those labels and SDSs (and downstream employers using or handling these products must update their training and documents accordingly
- 2024 rule is intended to better ensure that trade secrets protections no longer prevent workers and first responders from receiving critical hazard information on the mandated “Safety Data Sheets” (SDSs),
- SDSs must be stored on site or electronically available for all covered chemicals and commercial products that are used or stored on site.
- For bulk shipments, OSHA has harmonized the labeling requirements with DOT, and simplifies the “dual labeling requirements” for regulated entities.
- The rule also clarifies that warehousing operation employees **do not have to open sealed pallets and boxes** of containers to relabel them **or repackage products in preprinted bags**.

HazCom Enforcement - $161K Maximum

The most cited sections of the current rule are:

- 1910.1200(e)(1): Employers shall develop, implement and maintain at each workplace a written hazard communication program that at least describes how the criteria specified in paragraphs (f), (g) and (h) of this section for labels and other forms of warning, Safety Data Sheets, and employee information and training will be met. – **1,136 citations in FY 2023**
- 1910.1200(h)(1): Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and Safety Data Sheets. – **843 citations in FY 2023**
- **1**910.1200(g)(8): The employer shall maintain in the workplace copies of the required Safety Data Sheets for each hazardous chemical, and shall ensure they are readily accessible during each work shift to employees when they are in their work area(s). – **363 citations in FY 2023**
- 1910.1200(f)(6): Workplace labeling. Except as provided in paragraphs (f)(7) and (f)(8) of this section, the employer shall ensure each container of hazardous chemicals in the workplace is labeled, tagged or marked. – **315 citations in FY 2023,** and
- 1910.1200(g)(1): Chemical manufacturers and importers shall obtain or develop a Safety Data Sheet for each hazardous chemical they produce or import. Employers shall have a Safety Data Sheet in the workplace for each hazardous chemical which they use. – **252 citations in FY 2023.**

Exceptions to HazCom Standard

- Some hazardous chemicals are regulated under other standards/statutes (beyond the OSH Act), including:
  - Hazardous Waste: Controlled under RCRA by EPA (in addition to OSHA HAZWOPER rule)
  - Food, food additives, drugs & cosmetics: Regulated under Federal Food, Drug & Cosmetic Act by FDA
  - Consumer products or hazardous substances: Regulated under Federal Hazardous Substances Act or Consumer Product Safety Act
  - Pesticides: Controlled by Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and enforced by EPA
  - Alcohol (not for industrial use): Regulated by BATF and enforced by Treasury Dept.

HazCom: Basic Requirements

- **Hazard classification**: Provides specific criteria for classification of health and physical hazards, as well as classification of mixtures.
- **Labels**: Chemical manufacturers and importers will be required to provide a label that includes a harmonized signal word, pictogram, and hazard statement for each hazard class and category. Precautionary statements must also be provided.
- **Safety Data Sheets**: GHS has a specified 16-section format.
- **Information and training**: Workers must be trained to facilitate recognition and understanding of the new labels and safety data sheets
  - ✓ ONGOING obligation to train whenever new chemicals are introduced to the workplace or a worker will change tasks and encounter new chemical hazards

Employer Responsibilities

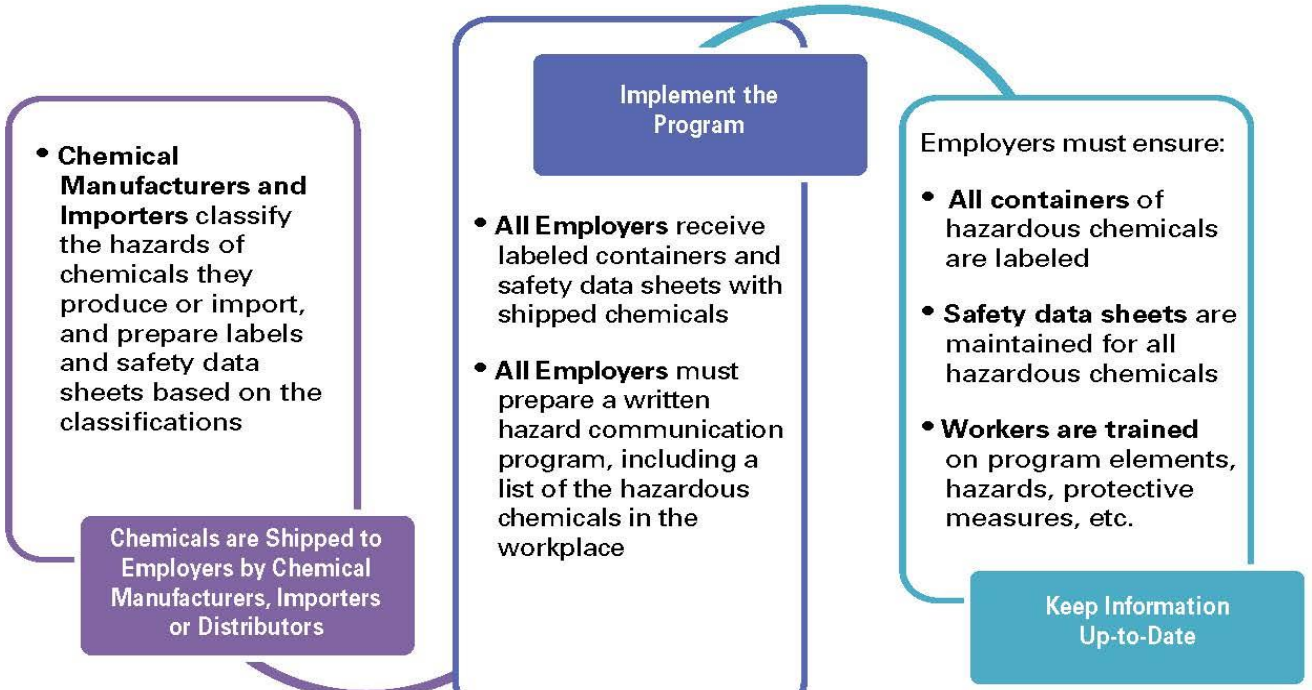
Employer responsibilities under the HCS:

- Ensure labels are on incoming packages and not defaced
- Maintain SDSs from shipments
- Obtain SDSs if not received
- Ensure SDSs are readily accessible
- Ensure chemicals in workplace are properly labeled, tagged, or marked
- Provide information and training to employees
- Provide information/access for employees in multi-employer workplaces
- Develop, implement, and maintain a written hazard communication program

Employer Responsibilities

How It Works:

Figure 1: How Hazard Communication Works



Hazard Communication Program

Requirements for a written program:

- Develop, implement, and maintain a written hazard communication program
- Main intent is to ensure compliance with standard in a systematic way that coordinates all elements

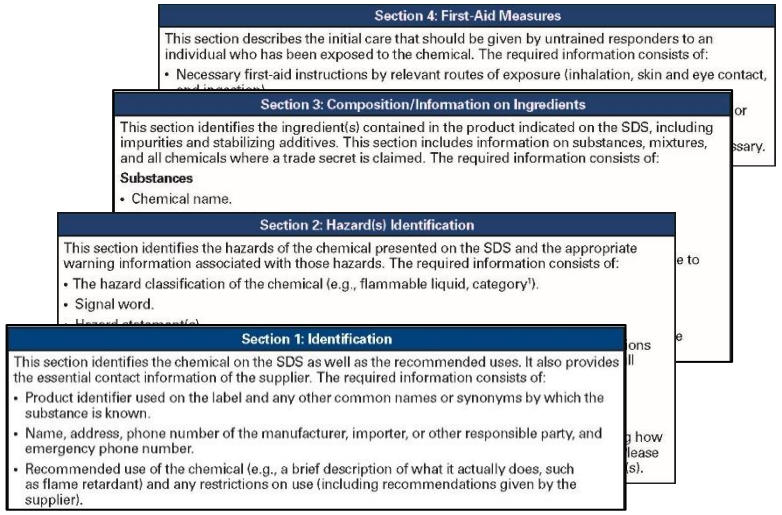
Components of written program:

- Lists of hazardous chemicals present at worksite
- Availability of SDSs to employees and downstream employers
- Labeling of chemical containers
- Training programs regarding hazards of chemicals and protective measures

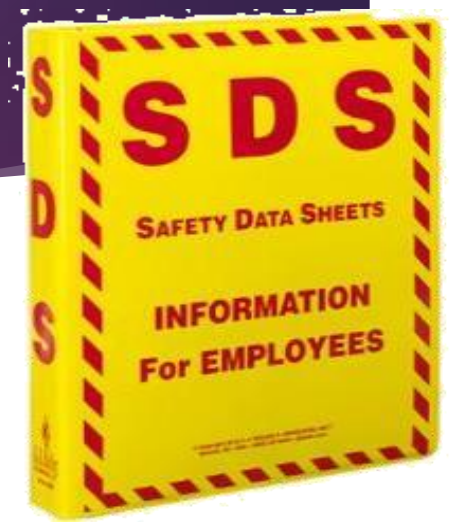
Hazard Communication Program

Safety data sheet (SDS):

- Available and accessible to workers
- Required for all hazardous chemical used
- Do not use hazardous chemicals if there is no SDS available
- 16-section format



Hazard Communication Program



SDS documentation:

- ✓ Designate person(s) responsible for obtaining and maintaining SDSs
- ✓ Describe how SDSs are maintained and how employees can access them
- ✓ Procedures if SDS is not received with first shipment
- ✓ Must have SDS for each chemical; train workers on SDS format and use

SDS Format Requirements

1.Identification of the substance or mixture and of the supplier
2.Hazards identification
3.Composition/information on ingredients Substance/Mixture
4.First aid measures
5.Firefighting 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
12.Ecological information (non mandatory)
13.Disposal considerations (non mandatory)
14.Transport information (non mandatory)
15.Regulatory information (non mandatory)
16.Other information including information on preparation and revision of the SDS

Hazard Determination

- Hazard determination/classification are self-classification processes – manufactures and importers must classify each chemical, determine appropriate hazard class and category based on evaluation of full range of available data/evidence
- No testing is required
- OSHA adopted "one study" rule in 2012 for findings of hazards: a chemical for which there is statistically significant evidence based on at least one study that acute or chronic health effects may occur is classified as a "health hazard"
  - Appendix A defines health and physical hazards
  - Appendix B includes additional parameters to evaluate health hazard data
  - Appendix F pertains to carcinogens
  - A "floor" of chemicals to be considered hazardous is provided by reference to several existing lists of chemicals
- Added supplemental class: "Hazards not otherwise classified" and included coverage of combustible dust.

Hazard Communication Labeling

- All containers of hazardous materials must be labeled
  - Immediate warning
  - Snapshot of hazards and protective information
- For labeling, manufacturer/importer must include:
  - Product identifier
  - Signal word
  - Hazard statement(s)
  - Pictogram(s)
  - Precautionary statement(s)
  - Name, address, and telephone number of responsible party
- Once a chemical has been classified, the label preparer can obtain the relevant harmonized information from Appendix C
  - Use of third-party hazard rating systems such as the NFPA diamonds and HMIS is still a valid approach in the workplace

HCS Pictograms and Hazards

Health Hazard	Flame	Exclamation Mark
• Carcinogen • Mutagenicity • Reproductive Toxicity • Respiratory Sensitizer • Target Organ Toxicity • Aspiration Toxicity	• Flammables • Pyrophorics • Self-Heating • Emits Flammable Gas • Self-Reactives • Organic Peroxides	• Irritant (skin and eye) • Skin Sensitizer • Acute Toxicity (harmful) • Narcotic Effects • Respiratory Tract Irritant • Hazardous to Ozone Layer (Non Mandatory)
Gas Cylinder	**Corrosion**	**Exploding Bomb**
• Gases under Pressure	• Skin Corrosion/ burns • Eye Damage • Corrosive to Metals	• Explosives • Self-Reactives • Organic Peroxides
Flame over Circle	**Environment** (Non Mandatory)	**Skull and Crossbones**
• Oxidizers	• Aquatic Toxicity	• Acute Toxicity (fatal or toxic)

HazCom/GHS - Training

- Training users of hazard information is integral part of hazard communication
  - Manufacturers rely on employer training obligation as a defense in tort liability cases!
- Systems should identify appropriate education and training for GHS target audiences who must interpret label and/or SDS information and take action in response to chemical hazards.
- Training should address: workers, emergency responders and those involved with preparation of labels, SDS and HazCom strategies as part of risk management systems.
- Systems should also educate consumers in interpreting label information on products they use.

HazCom/GHS - Training

Training requirements:

- Train employees on hazardous chemicals in their work area
  - Before initial assignment
  - When new hazards are introduced
  - Non-routine tasks
- Include in training
  - Methods/observations to determine presence/release of chemical in area
  - Hazards of chemicals
  - Appropriate protective measures
  - Where and how to obtain additional information
- Training must be in a language AND vocabulary that worker can understand!

PPE Hazard Assessment

- Under 29 CFR 1910 Subpart I (1910.132) employer must perform a hazard assessment to select appropriate PPE for the hazards that are present, or likely to be present, including foreseeable emergencies – INCLUDING CHEMICAL HAZARDS!
  - SDS provides guidance as to type of PPE needed for tasks involving each chemical
- Paragraph (d) of 1910.132 is a performance-oriented provision but clearly indicates that the employer is accountable both for the quality of the hazard assessment and for the adequacy for the PPE selected.
- The hazard assessment must be in the form of a written certification as described in 29 CFR 1910.132(d)(2) (does not need to be written for construction but must still conduct)
- Employees who are required to use PPE must be trained to know how to select, don/doff, maintain and use the proper PPE that is provided to them … and be aware of its limitations!

Contractors & Hazard Communication

Mandatory standards requiring harmonization of safety and health efforts include, but are not limited to:

- Hazard communication standard
- Confined space entry (including atmospheric monitoring, LOTO)
- Process safety management
- Asbestos removal
- Hazardous waste (HAZWOPER)
- Emergency response activities

✓ ***OSHA can use its multi-employer worksite citation powers where sufficient communication did not occur between the host employer and the contractor or temp agency about the chemicals to which those third-party workers would be exposed***

Compliance Tips

- HazCom Standard 29 CFR 1910.1200 is always among OSHA's Top Five cited standard – often due to paperwork errors and training gaps
- Training of workers must be done PRIOR to use of a covered chemical – and must be documented!!!
- As new products are ordered, make sure to keep SDSs in new formats and ensure there is a process for review of the new SDSs/Labels for products already in use to pinpoint any new information, and communicate that to all affected workers
- Pay special attention to changes in PPE requirements, or OELs listed, as OSHA may enforce these components
- Companies that manufacture products will have to conform to both employer and manufacturer provisions of revised HCS rule
- Replace old SDSs as they are received, but keep the historical ones as required by 1910.1020 and 1910.1200.
- Note the deadlines in the 2024 HazCom standard – impacting employers, manufacturers and distributors!

Questions???

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