

## Labor & Employment **ADVISORY**

April 11, 2012

### OSHA Issues Final Rule Modifying the Hazard Communication Standard

On March 26, 2012, OSHA published its final rule modifying the Hazard Communication Standard (HCS) to conform to the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA notes that the conformance with the GHS is intended to bring consistency and clarity to hazard communication and help ensure that employees have reliable, consistent, comprehensive and comprehensible information regarding chemical hazards. This final rule follows an Advance Notice of Proposed Rulemaking on the GHS in September 2006 and a subsequent Notice of Proposed Rulemaking in September 2009. The primary changes made to the HCS, discussed in more detail below, include revised criteria for the classification of chemical hazards, a revised uniform labeling format, a specified 16-section format for safety data sheets and requirements for employee training on labels and safety data sheets.

#### Classification of Chemical Hazards

The new HCS adopts the classification system of the GHS, which is similar in many respects to the method of classification under the current HCS, but refines the approach by assigning categories of hazard within hazard classes, providing detailed scientific approaches to evaluating available data to help ensure consistent results across multiple evaluators and allowing a broader use of available data. Under the new classification system, chemical manufacturers and importers are required to classify the health and physical hazards of chemicals and chemical mixtures in accordance with 29 C.F.R. § 1910.1200(d)(1) and with revised Appendixes A and B. The classification must include consideration of the full range of available scientific literature and other evidence concerning the potential hazard, but the final rule makes clear that the extent of the literature search required is only that which a reasonably prudent evaluator would undertake to assure himself that evidence for the range of hazards covered by the rule has been identified and a thorough evaluation of potential effects has been completed. As is the case under the current HCS, under the new HCS, employers are not required to classify chemicals unless they choose not to rely on the classification performed by the chemical manufacturer or importer.

#### Revised Labeling Provisions

While the current HCS labeling requirements establish the basic information requirements for chemical manufacturers and importers, they do not specify a format or any particular label elements to be used. OSHA determined that a more specified approach would lead to consistency among manufacturers and help ensure the same message is received by all exposed employees. Accordingly, under the new HCS, at 1910.1200(f) and new Appendix C, OSHA created a specific labeling format that requires manufacturers and importers to include on their shipped container labels various types of information for each hazard class and category, including the

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

product identifier, signal word, hazard statements, pictograms and precautionary statements. Contact information of the manufacturer, importer or other responsible party must also be included on the container label. These are minimum requirements and additional or supplemental information is permitted on the labels under the new HCS—just as it is under the current HCS—so long as it is accurate and does not conflict with the required label elements. With respect to workplace labeling, the new HCS retains the flexibility of the current HCS and allows the employer to choose to label workplace containers either with the same label that would be on the shipped containers for that chemical or with label alternatives meeting the HCS's requirements.

## New Safety Data Sheet Format

The current HCS indicates what types of information must be included on the “Material Safety Data Sheets,” but does not specify a format for presentation or an order of information. The new HCS changes the terminology from “Material Safety Data Sheets” to “Safety Data Sheets” (SDS) to provide consistency with the GHS, and, more importantly, sets out a specific 16-section format to ensure consistency in the presentation of important information. As set out in the new HCS, at 1910.1200(g), the following sections are required in the order specified: (1) Identification; (2) Hazard 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; (12) Ecological information; (13) Disposal considerations; (14) Transport information; (15) Regulatory information; and (16) Other information, including date of preparation or last revision. New Appendix D sets out the specific content requirements of each section. Notably, OSHA will not be enforcing information requirements in Sections (12) through (15), as these areas are not under its jurisdiction.

## Employee Training

The GHS does not include harmonized training requirements, and thus substantial modifications to the current HCS in this regard were not needed. The new HCS does require, however, at 1910.1200(h)(3)(iv), that employers train workers on new label elements and SDS format in addition to the current training requirements in order to facilitate understanding of the new system. In addition, at 1910.1200(h)(3)(ii), “simple asphyxiation, combustible dust and pyrophoric gas hazards, as well as hazards not otherwise classified” are added to the list of required training topics for workplace chemicals.

While the effective date for the new HCS is May 25, 2012, compliance requirements will be phased in over the next several years and employers will be considered to be in compliance with the HCS during the transition with respect to new HCS requirements, so long as they are complying with either the new HCS or the current version prior to the applicable deadline set forth in the final rule. Key deadlines are as follows:

<b>December 1, 2013:</b>	Deadline for employers to train employees regarding the new label elements and SDS format.
<b>June 1, 2015:</b>	Deadline for compliance with provisions for preparation of new labels and SDSs, except distributors will have until December 1, 2015, when all containers shipped must bear the new labels.
<b>December 1, 2015:</b>	Final deadline for distributors' compliance with new labeling requirements.
<b>June 1, 2016:</b>	Deadline for employers to update their hazard communication programs and workplace signs.

If you would like to receive future *Labor & Employment Advisories* electronically, please forward your contact information including e-mail address to [labor.advisory@alston.com](mailto:labor.advisory@alston.com). Please be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

## Alston & Bird's Labor & Employment Group

### ATLANTA

Shama Barday  
404.881.7437  
[shama.barday@alston.com](mailto:shama.barday@alston.com)

Ashley D. Brightwell  
404.881.7767  
[ashley.brightwell@alston.com](mailto:ashley.brightwell@alston.com)

Lisa H. Cassilly  
404.881.7945  
[lisa.cassilly@alston.com](mailto:lisa.cassilly@alston.com)

Brett E. Coburn  
404.881.4990  
[brett.coburn@alston.com](mailto:brett.coburn@alston.com)

Patrick L. Coyle  
404.881.4367  
[patrick.coyle@alston.com](mailto:patrick.coyle@alston.com)

Clare H. Draper IV  
404.881.7191  
[clare.draper@alston.com](mailto:clare.draper@alston.com)

R. Steve Ensor  
404.881.7448  
[steve.ensor@alston.com](mailto:steve.ensor@alston.com)

Kimberly L. Fogarty  
404.881.4502  
[kim.fogarty@alston.com](mailto:kim.fogarty@alston.com)

Alexandra V. Garrison  
404.881.7190  
[alex.garrison@alston.com](mailto:alex.garrison@alston.com)

Marilee Fiebig Holmes  
404.881.4374  
[marilee.holmes@alston.com](mailto:marilee.holmes@alston.com)

Molly M. Jones  
404.881.4993  
[molly.jones@alston.com](mailto:molly.jones@alston.com)

J. Thomas Kilpatrick  
404.881.7819  
[tom.kilpatrick@alston.com](mailto:tom.kilpatrick@alston.com)

Christopher C. Marquardt  
404.881.7827  
[chris.marquardt@alston.com](mailto:chris.marquardt@alston.com)

Wes R. McCart  
404.881.7653  
[wes.mccart@alston.com](mailto:wes.mccart@alston.com)

Charles H. Morgan  
404.881.7187  
[charlie.morgan@alston.com](mailto:charlie.morgan@alston.com)

Edmund M. Morrell  
404.881.7953  
[edmund.morrell@alston.com](mailto:edmund.morrell@alston.com)

Glenn G. Patton  
404.881.7785  
[glenn.patton@alston.com](mailto:glenn.patton@alston.com)

Robert P. Riordan  
404.881.7682  
[bob.riordan@alston.com](mailto:bob.riordan@alston.com)

Eileen M. Scofield  
404.881.7375  
[eileen.scofield@alston.com](mailto:eileen.scofield@alston.com)

Alicia P. Starkman  
404.881.4994  
[alicia.starkman@alston.com](mailto:alicia.starkman@alston.com)

### CHARLOTTE

Susan B. Molony  
704.444.1121  
[susan.molony@alston.com](mailto:susan.molony@alston.com)

### DALLAS

Jon G. Shepherd  
214.922.3418  
[jon.shepherd@alston.com](mailto:jon.shepherd@alston.com)

### NEW YORK

Erin L. Connolly  
212.210.9461  
[erin.connolly@alston.com](mailto:erin.connolly@alston.com)

Stephen S. Hart  
212.210.9463  
[stephen.hart@alston.com](mailto:stephen.hart@alston.com)

James F. Moyle  
212.210.9454  
[james.moyle@alston.com](mailto:james.moyle@alston.com)

### LOS ANGELES

Lindsay G. Carlson  
213.576.1038  
[lindsay.carlson@alston.com](mailto:lindsay.carlson@alston.com)

Martha S. Doty  
213.576.1145  
[martha.doty@alston.com](mailto:martha.doty@alston.com)

Jesse M. Jauregui  
213.576.1157  
[jesse.jauregui@alston.com](mailto:jesse.jauregui@alston.com)

Deborah Yoon Jones  
213.576.1084  
[debbie.jones@alston.com](mailto:debbie.jones@alston.com)

Sayaka Karitani  
213.576.1026  
[sayaka.karitani@alston.com](mailto:sayaka.karitani@alston.com)

Claire Lucy Readhead  
213.576.1181  
[claire.readhead@alston.com](mailto:claire.readhead@alston.com)

Nicole C. Rivas  
213.576.1021  
[nicole.rivas@alston.com](mailto:nicole.rivas@alston.com)

Casondra K. Ruga  
213.576.1133  
[casondra.ruga@alston.com](mailto:casondra.ruga@alston.com)

**WASHINGTON, D.C.**

Emily Seymour Costin  
202.239.3695  
[emily.costin@alston.com](mailto:emily.costin@alston.com)

Charles A. Gartland II  
202.239.3978  
[chuck.gartland@alston.com](mailto:chuck.gartland@alston.com)

Jonathan G. Rose  
202.239.3693  
[jonathan.rose@alston.com](mailto:jonathan.rose@alston.com)

Leslie Wood Bradenham  
202.239.3636  
[leslie.bradenham@alston.com](mailto:leslie.bradenham@alston.com)

### ATLANTA

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
404.881.7000

### BRUSSELS

Level 20 Bastion Tower  
Place du Champ de Mars  
B-1050 Brussels, BE  
Phone: +32 2 550 3700

### CHARLOTTE

Bank of America Plaza  
Suite 4000  
101 South Tryon Street  
Charlotte, NC 28280-4000  
704.444.1000

### DALLAS

2828 N. Harwood St.  
Suite 1800  
Dallas, TX 75201  
214.922.3400

### LOS ANGELES

333 South Hope Street  
16th Floor  
Los Angeles, CA 90071-3004  
213.576.1000

### NEW YORK

90 Park Avenue  
New York, NY 10016-1387  
212.210.9400

### RESEARCH TRIANGLE

4721 Emperor Boulevard  
Suite 400  
Durham, NC 27703-8580  
919.862.2200

### SILICON VALLEY

275 Middlefield Road  
Suite 150  
Menlo Park, CA 94025-4004  
650.838.2000

### VENTURA COUNTY

Suite 215  
2801 Townsgate Road  
Westlake Village, CA 91361  
805.497.9474

### WASHINGTON, D.C.

The Atlantic Building  
950 F Street, NW  
Washington, DC 20004-1404  
202.239.3300

**[www.alston.com](http://www.alston.com)**

© Alston & Bird LLP 2012