



Reply to the attention of:

MAY 29 2015

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH:

Dorothy Dougherty
DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM:

Thomas Galassi
THOMAS GALASSI, Director
Directorate of Enforcement Programs (DEP)

SUBJECT:

Interim Enforcement Guidance for Hazard Communication
2012 (HCS 2012) June 1, 2015 Effective Date

This memorandum is to provide additional, interim guidance on the Hazard Communication 2012 June 1, 2015 effective date. OSHA provided related guidance in its February 9, 2015 memorandum which described the Agency's enforcement position for manufacturers, importers, and distributors that have not received classification and SDS information from upstream supplier(s) on which it intends to rely for classification of its product before June 1, 2015. The February 9th memo explained that in this situation, enforcement discretion would allow for limited continued use of HCS 1994-compliant MSDSs and labels provided that the manufacturer or importer exercised reasonable diligence and made good faith efforts to comply with HCS 2012 prior to June 1st. Since issuing the guidance on February 9, 2015, OSHA has received an overwhelming number of additional questions and requests for further clarification on behalf of manufacturers, importers, and distributors. Many of the questions relate to the use of HCS 1994-compliant labels on containers packaged for shipment (i.e., existing stock.)

The Agency's efforts to ensure that additional clarification is incorporated in the revised Hazard Communication directive have led to a minor delay in completing review and clearance of the directive. The directive is now anticipated to be approved for issuance shortly after June 1, 2015, and this memorandum will be cancelled upon its issuance. The following interim policy is being provided on the limited continued use of HCS 1994-compliant labels:

- **Guidance for manufacturers and importers of hazardous chemicals**

Where a manufacturer or importer has not received classification information from its upstream supplier(s) on which it intends to rely for the classification of its

product before June 1, 2015, the manufacturer or importer may continue use of the HCS 1994 label under certain limited circumstances. To do so, the manufacturer or importer must be able to initially demonstrate it has exercised reasonable diligence and made good faith efforts to obtain and integrate the information.

The CSHO must review the overall efforts and actions taken to comply. No citation will be issued in cases where the manufacturer or importer provides persuasive documentation to show that it made reasonable efforts to obtain the necessary information from upstream suppliers, and attempted to find hazard information from alternative sources (e.g., chemical registries) to classify the data. In these limited situations, manufacturers and importers must promptly create HCS 2012-compliant labels within six months after they develop the updated SDS. All containers shipped after the six-month period must be labeled with an HCS 2012-compliant label.

Manufacturers or importers of hazardous chemicals (including businesses that repackages) that have existing stock packaged (e.g., boxed, palletized, shrink-wrapped, etc.) for shipment prior to June 1, 2015, that are HCS 1994-compliant labeled, may continue to ship those containers downstream. In such instances, there is no requirement to re-label packaged for shipment containers with HCS 2012-compliant labels. The manufacturer or importer must provide HCS 2012-compliant labels and SDSs for each and every individual container shipped, unless the manufacturer or importer can demonstrate that it exercised reasonable diligence and good faith as discussed in this policy.

After June 1, 2015, a manufacturer or importer of hazardous chemicals who packages containers for shipment must label each and every container with a HCS 2012-compliant label prior to shipping.

- **Guidance for businesses that repackage, blends, or mix hazardous chemicals**

Some businesses repackage, blend, or mix hazardous chemicals, but consider themselves to be distributors in the supply chain. Under the HCS, however, they are considered manufacturers, and the labelling guidance discussed above for manufacturers and importers applies to them as well.

- **Guidance for distributors of hazardous chemicals**

The HCS 2012 permits distributors to continue to ship chemicals with HCS 1994 labels until December 1, 2015. There may be distributors that are consequently unable to comply with the December 1, 2015 effective date where a manufacturer or importer cannot comply with the June 1, 2015 effective date despite its reasonably diligent and good faith efforts. In these situations, CSHOs must determine, whether the distributor has evidence that it has in fact exercised

reasonable diligence and good faith to comply with the December 1, 2015 effective date.

Before December 1, 2015, distributors with existing stock packaged (e.g., boxed, palletized, shrink-wrapped, etc.) for shipment and containers that are HCS 1994-compliant labeled, may continue to ship those containers downstream. In these instances, there is no requirement to re-label packaged for shipment containers with HCS 2012-compliant labels. Distributors must provide a HCS 2012-compliant label and SDS for each and every individual container shipped with any future shipments after December 1, 2015 or upon request, unless they can demonstrate reasonable diligence and good faith as discussed in this policy. Additionally, distributors must provide HCS 2012-compliant SDSs to downstream users with the first shipment after a new or revised SDS is provided by the manufacturer or importer.

All containers in the control of a distributor after December 1, 2017, must be HCS 2012-compliant labeled prior to shipping.

- **What are Reasonable Diligence and Good Faith Efforts?**

To determine if a manufacturer or importer was reasonably diligent and made good faith efforts to obtain and integrate updated information, CSHOs must review overall efforts and action(s) taken to comply with HCS 2012. CSHOs should request that manufacturers or importers provide documentation of any and all efforts to:

- Obtain classification information and SDSs from upstream suppliers;
- Find hazard information from alternative sources (e.g., chemical registries); and,
- Classify the data themselves.

Establishing reasonable diligence and good faith requires that manufacturers or importers demonstrate attempt(s) to obtain the necessary SDSs through both oral and written communications directly with the upstream supplier. For each hazardous chemical shipped by a manufacturer or importer after June 1, 2015 that does not comply with HCS 2012, the CSHO shall consider whether the manufacturer or importer:

- a) Developed and documented the process used to gather the necessary classification information from its upstream suppliers and the current status of such efforts;
- b) Developed and documented efforts to find hazard information from alternative sources (e.g., chemical registries);

- c) Provided a written account of its continued communications with upstream suppliers, including dated copies of all relevant written communication;
- d) Provided a written account of continued communications with its distributors, including dated copies of all relevant written communication with its distributors informing them why it has been unable to comply with HCS 2012; and,
- e) Developed the course of action it will follow to make the necessary changes to SDSs and labels once the information becomes available.

Although CSHOs must evaluate all of the above factors, any combination of these efforts may be considered to be reasonably diligent and made in good faith. CSHOs shall also consider whether the manufacturer or importer attempted to obtain the hazard information in a timely manner (i.e., in a way that would have enabled it to comply with the June 1, 2015 effective date) in determining whether reasonable diligence and good faith efforts to comply are present. Additionally, manufacturers or importers should provide a clear timeline when it expects to comply with HCS 2012 to meet this test.

In cases where a distributor cannot comply with the December 1, 2015 effective date, CSHOs shall determine, on a case-by-case basis, whether the distributor exercised reasonable diligence and good faith to comply with the December 1, 2015 effective date. In making such determination, distributors must present documentation of any and all communications with the manufacturer or importer regarding its reasons for noncompliance with HCS 2012.

Issuance of the revised HCS 2012 directive will cancel both the February 9, 2015 memorandum and this interim enforcement memorandum. If you have any questions, please contact the Office of Health Enforcement at 202-693-2190.