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[Lynn M. Stathas](#)
[Carolyn A. Sullivan](#)
[Katie D. Triska](#)
[John H. Zawadsky](#)

Consultant

[Scott D. Prill](#)

1000 North Water Street
P.O. Box 2965
Milwaukee, WI 53201-2965
414-298-1000
800-553-6215

22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018
608-229-2200
800-728-6239

N16W23250 Stone Ridge Drive
P.O. Box 2265
Waukesha, WI 53187-2265
262-951-4500
800-928-5529

2215 Perrygreen Way
Rockford, IL 61107
815-633-5300
800-840-5420

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OSHA'S PROPOSED REVISED HAZARD COMMUNICATION STANDARD

In 1983 OSHA promulgated the chemical Hazard Communication Standard (Haz Comm Standard). Other countries have passed laws with scopes similar to the Haz Comm Standard. These laws have differing requirements. As a result, manufacturers who ship products internationally need to comply with a variety of complex regulatory requirements. This leads to major compliance burdens and cost increases for chemical manufacturers and those involved in international trade. For example, while several countries maintain specific lists of hazardous chemicals, the Haz Comm Standard provides definitions of health and physical hazards to use as a criteria for determining hazardous chemicals—in other words a performance-based evaluation versus a list-based system.

To reduce this regulatory burden, OSHA proposes to modify the existing Haz Comm Standard to conform with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Several countries have already adopted the GHS including Japan, China, Canada and the countries included in the European Union. The U.S. has been slower to adopt GHS because OSHA's Haz Comm Standard has been in effect for several years. OSHA believes the proposed modifications to the Haz Comm Standard would increase the quality and consistency of chemical information provided to employers and employees.

The proposed modifications to the Haz Comm Standard rule were issued in the Federal Register on September 30, 2009. A three-month public comment period followed which ended on December 29, 2009. For the public comment period, OSHA requested input on a variety of relevant issues including the economic impact, the environmental impact, effects on small businesses, proposed revisions to the Haz Comm Standard and subsequent modifications to other standards. OSHA is currently reviewing the comments received since the public comment period ended. OSHA intends to revise the Haz Comm Standard to conform with the GHS.

The three pillars of OSHA's current Haz Comm Standard are labeling, safety data sheets (SDSs) (also known as Material Safety Data Sheets or MSDSs) and employee training. Several of OSHA's proposed modifications to make the Haz Comm Standard consistent with the GHS include:

1. Revise the criteria for classification of chemical hazards. OSHA proposes to adopt all of the physical and health hazard classes included in the GHS as well as classifications of mixtures.
2. Revise the labeling provisions to include, for example, consistent use of standardized signal words, pictograms, hazard statements and precautionary statements. OSHA proposes to change labeling requirements by including with each substance's specific standard, a list of health effects that must be considered for the hazard classification. The modified Haz Comm Standard will dictate the specific language that is required on labels through the classification process.
3. Provide a specific format for SDSs. Currently the Haz Comm Standard allows a nine section format. The modified Haz Comm Standard would require a specific 16 section format. However, OSHA may allow certain sections to be optional under the

modified Haz Comm Standard rule. Also, OSHA proposes to require OSHA permissible exposure limits on the SDSs as well as other exposure limits recommended by the chemical manufacturer, importer or employer who prepares the MSDS.

4. Address requirements for training. The GHS tends to leave training details to the specific country and, as a result, OSHA will keep the training requirements in the Haz Comm Standard. Specifically OSHA's proposal requires employers to train employees regarding the new labels and SDSs within two years after publication of the modified final Haz Comm Standard rule. Additionally OSHA has proposed that chemical manufacturers, importers, distributors and employers be required to comply with all provisions of the modified final rule within three years after its publication.

The proposed revisions have resulted in comments by various organizations on sections of the Haz Comm Standard. For example, OSHA proposes to include a definition for unclassified hazards in the Haz Comm Standard. OSHA's intent is that all hazards currently covered by the Haz Comm Standard or new hazards identified in the future be included in the revised Haz Comm Standard until they are added to GHS and subsequently adopted by OSHA. The U.S. Chamber of Commerce has urged OSHA to "reconsider the proposed addition of the term 'unclassified hazards' which we believe will not only cause confusion to employers and employees alike but could allow the agency to impose significant new obligations on employers and employees without undertaking the necessary required rulemaking steps."

Approximately five million workplaces in the U.S. are expected to be affected by the revised Haz Comm Standard. However, OSHA has stated that the proposed Haz Comm Standard will not have a significant impact on a substantial number of small business entities. The U.S. Chamber of Commerce disagrees and believes "this decision was based on an economic impact assessment that severely underestimated the costs and burdens associated with compliance with this proposal and overestimated the benefits that will flow from it." Thus, OSHA's proposed revisions to the Haz Comm Standard may have far reaching effects on millions of American workplaces.

OSHA will host informal public hearings on the proposal to align the Haz Comm Standard with the GHS. The first hearing will occur March 2 at the U.S. Labor Department's headquarters in Washington, D.C. Additional hearings will take place on March 31 in Pittsburgh and April 13 in Los Angeles.

The impacts of the proposed modified Haz Comm Standard rule will not be known until the rule is finalized. There is no scheduled date for the final rule to be issued. Until then—stay tuned.

This *Headlines in Labor and Employment Law E-Alert* provides general information about labor and employment issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

