Revised OSHA Hazard Communication Standard (HCS) and Legal Implications for Agricultural Chemicals

February 28, 2013
Revised OSHA HCS and Legal Implications for Agricultural Chemicals

- Key changes in revised Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS)
- U.S. Environmental Protection Agency (EPA) guidance for pesticide products
- Issues for agricultural chemicals, including pesticides, adjuvants, inert ingredients, and fertilizers
Revised OSHA HCS

- OSHA HCS -- revised final rule
  - Effective on May 25, 2012
  - Codified at 29 C.F.R. Part 1910, with other conforming modifications to Parts 1915 and 1926

- Revisions generally align the HCS with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS)
Revised OSHA HCS -- Major Revisions

- The rule makes four major changes to the HCS:
  - **Hazard classification:** Chemical manufacturers and importers are required to determine the hazards of the chemicals they produce or import. Revised HCS includes modified standards for hazard evaluation.
  - **Labels:** Chemical manufacturers and importers must provide a label that includes a signal word, pictogram, hazard statement, and precautionary statement for each hazard class and category.
  - **Safety Data Sheets (SDS):** The new format requires 16 specific sections, promoting consistency in presentation of key information.
  - **Information and training:** The revised HCS requires that employers train workers by December 1, 2013, on the new label elements and SDS format, in addition to the current training requirements.
# Revised OSHA HCS -- Implementation Schedule

<table>
<thead>
<tr>
<th>Effective Completion Date</th>
<th>Requirement(s)</th>
<th>Who</th>
</tr>
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<tbody>
<tr>
<td>December 1, 2013</td>
<td>Train employees on the new label elements and SDS format</td>
<td>Employers</td>
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<tr>
<td>June 1, 2015</td>
<td>Comply with all modified provisions of this final rule, except:</td>
<td>Chemical manufacturers, importers, distributors, and employers</td>
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<tr>
<td></td>
<td>Distributors may ship products labeled by manufacturers under the old system until December 1, 2015</td>
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<tr>
<td>December 1, 2015</td>
<td>Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards</td>
<td>Employers</td>
</tr>
<tr>
<td>June 1, 2016</td>
<td>Comply with either 29 C.F.R. Section 1910.1200 (this final standard), or the current standard, or both</td>
<td>All chemical manufacturers, importers, distributors, and employers</td>
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</table>
Potential for Conflict between HCS/GHS and FIFRA Labeling

- OSHA’s revised HCS implements a mandatory hazard classification process and requires metrics and mandatory hazard statements, signal words, pictograms, and precautionary statements.

- In 29 C.F.R. Section 1910.1200(b)(5)(1), OSHA states that the HCS does not require labeling of pesticides that are subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labeling requirements.

- FIFRA defines “labeling” to include all written, printed, or graphic matter distributed with the pesticide or referred to on the product label, which EPA views as including (M)SDSs (pesticide product labels and (M)SDSs may therefore be inconsistent).

- If labeling (e.g., SDS) conflicts with the EPA-approved label, EPA could consider the product under FIFRA misbranded and unlawful for sale or distribution.
EPA Guidance Concerning HCS/GHS and Pesticides


- Website: [http://www.epa.gov/oppfead1/international/ghs/implement.htm](http://www.epa.gov/oppfead1/international/ghs/implement.htm)
EPA PR Notice 2012-1

- EPA acknowledges that FIFRA labels and SDSs for the same products may contain conflicting language because HCS/GHS and FIFRA hazard categories and required statements are not identical.

- EPA also acknowledges that there may be conflicts between FIFRA labels and the labels of other chemicals in the workplace, e.g., chemicals that have both FIFRA and non-FIFRA uses (dual-use chemicals) may have different hazard statements.

- EPA recommends that registrants include in the SDS Section 15, “the FIFRA label information and a brief explanation for any differences between that information and the SDS information.”
EPA Memorandum, *Importation of Pesticide Bearing Both EPA-approved and Foreign Labeling*

- Conflicts between international and U.S. hazard communication requirements for pesticide labels have led to instances in which pesticides imported into the United States bear two labels (U.S. label and label of exporting country).

- EPA memorandum clarifies that products will not be considered misbranded IF:
  - EPA-approved label is at all times clear and prominently shown on product’s immediate container.
  - If the foreign label is on the outer shipping or bulk container, the EPA label also appears prominently.
  - Product is imported directly to an EPA-registered establishment where foreign label is removed or obscured (this step occurs before any repackaging or use).
  - Hazard and first aid information consistent with EPA-approved labeling is always readily available to first responders.

- Unresolved issues remain.
Problem Solved? Continuing Challenges

- EPA solutions appear imperfect for federally registered pesticide products
- EPA’s guidance does not apply to fertilizers, adjuvants, or inert ingredients. These products must conform to the revised HCS requirements that may conflict with the requirements of other (e.g., state) authorities
SDS Section 15 Explanations

- In PR Notice 2012-1, EPA suggests manufacturers/employers explain label/SDS inconsistencies in Section 15.

- Section 15 is for “regulatory information” and perhaps not an obvious or intuitive spot for a discussion of conflicting hazard information.

- Unclear whether a “succinct” explanation will in all cases be adequate, but a complete explanation may result in a lengthy and costly tome that is unwieldy and inconsistent with the objective of efficient hazard communication.
Signal Words

- Revised HCS/GHS uses only two signal words to describe acute hazard: Danger and Warning
- EPA uses three signal words: Danger, Warning, and Caution
- EPA-approved pesticide label may state “Caution” but the required SDS signal word could be “Warning” or “Danger” depending on the acute toxicity data
- Signal words are intended to capture attention and provide immediate hazard communication (confusion is unlikely to be remedied by explanation buried in Section 15)
Certain States Register Adjuvants as Pesticides (EPA Does Not)

- California, Washington, others?
- States use FIFRA guidelines for product labeling language
- OSHA labeling exemption, EPA work-around not applicable
- Direct labeling conflict
- No state guidance to address
- Due to resource constraints, review of label revision applications is slow
- May lead to differing label requirements between states for same product, inviting commercial headaches and potential legal issues
Minimum Risk Pesticides

- Minimum risk pesticides are excluded from federal regulation by FIFRA Section 25(b)
- Several states require registration of minimum risk pesticides and rely on FIFRA standards
- Products subject to OSHA HCS/GHS and state labeling requirements, which conflict
- No guidance reportedly under development by OSHA, leaving states to resolve
- Cannot rely on state version of EPA guidance because conflict attaches to labels, not just MSDS
Products in Channels of Trade

- OSHA states distributors may ship products labeled under legacy HCS until December 1, 2015
- It is not unusual for agricultural chemical products to remain in inventory for e.g., three years, due to seasonal use
- While pesticide product labels are exempt, for non-pesticide agricultural chemical product labels, how will an OSHA inspector review existing inventory with a legacy HCS label in use after 2015?
Fertilizers

- Potential compliance challenge
- Under revised HCS, a GHS SDS/label is required for each fertilizer blend
  - Ranges are often used to describe multiple blends with slight differences
- Unlike pesticides and adjuvants, there has been little regulatory guidance provided on how to write labels
- Unclear whether/how state fertilizer label requirements for nutritional content or source information will conflict with revised HCS/GHS requirements and how conflicts will be resolved
- As usually not tested, fertilizers vulnerable to more conservative hazard classification afforded to untested mixtures
Trade Secret/Confidential Business Information (CBI)

- Legacy and revised HCS both defined what may be claimed as trade secret (see HCS Appendix E) and when trade secret information must be disclosed to protect health and safety.

- Revised HCS allows manufacturers to claim percent composition of mixtures as confidential.
Bottom Line

- Legal issues exist and are continuing to surface
- EPA, OSHA, and perhaps the Department of Transportation (DOT) will need to issue more guidance to help the agricultural chemical community
- This workshop is an excellent way to identify key issues and suggest a framework for their resolution that is efficient, collaborative, and useful
- CPDA is to be commended for its efforts to help in the problem solving process
Thank You

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