



Episode Title: Health Canada's Update to Rev 7/8 of GHS -- A Conversation with Karin F. Baron

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Lynn L. Bergeson (LLB): Hello, and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell, P.C. (B&C[®]) a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week I welcome back to the studio Karin F. Baron, Director of Hazard Communication and International Registration Strategy at Bergeson & Campbell, and our consulting affiliate, The Acta Group. Karin and I discuss the very important recently released amendments to the Canadian Hazardous Products Regulations, otherwise known as HPR. The amendments are intended to align the HPR with the seventh revised edition (Rev 7) of the United Nations (UN) Globally Harmonized System of Classification and Labeling of Chemicals (GHS). No one on planet Earth knows the global state of play of GHS regulation better than Karin. We focus here on what listeners need to know regarding the new HPR provisions, when they must be implemented, and how they will impact the classification and labeling of hazardous products in Canada and well beyond. Now, here is my conversation with Karin Baron.

Karin, it's great to have you back in the studio. Thank you so much for being here today.

Karin F. Baron (KFB): Thank you very much. I'm really happy to be here again.

LLB: Let's dive right in. We're going to talk about the Canadian initiative that came out last month when the Department of Health in Canada published revisions to the Hazardous Products Regulations. As I understand it, Karin, you're the expert, but the federal classification labeling and SDS requirements for hazardous products used in workplaces is a really big deal. These regulations are, as best as I can tell, intended to align the HPR with the seventh revised edition (Rev 7) of the Globally Harmonized System of Labeling of Chemicals, which we will talk about. As I also understand, it includes bits of Revision 8 (Rev 8), and these revisions are going to be phased in over a protracted period of three years. So at a treetops level, did I get that right? And why should our listeners care?

KFB: No, you absolutely got that right. We joke about it, but we do need to remember that Canada is a separate country from the United States.

LLB: True, true.

KFB: True. But also, more importantly, it's to understand that Canada is one of our top trading partners for exports and one of the top *three* trading partners for imports. So when Canada makes a substantial change to any type of chemical legislation, including this one, it has an impact on the United States. Whether it's sending information into Canada or receiving information *from* Canada, the information now will look different, and understanding what those differences are helps to just align you better with your trading partners.

LLB: Good to know. And I know in working with you for as long as I have, Karin, if you underestimate the significance of these initiatives -- because you and I chat pretty much weekly about new questions that come up, given a client's challenging position on how to label and classify a particular chemical substance, both with respect to Canadian regulations and in global GHS requirements, which are just constantly changing. I got to tell you, I'm amazed at your ability to keep all of these things straight. But let's talk a little bit about this Canadian initiative, which, as I noted, came out just last month in January. Can you, in very broad strokes, give us an overview of what are the key changes that are likely to invite probably the most interest and perhaps confusion?

KFB: Sure, absolutely. I think it's important to start understanding that the last time Canada updated its Hazardous Products Regulation was in 2015. We're now in 2023 with a three-year implementation period. What you're seeing is the original legislation -- it's roughly based on Revision 3, 4, and kind of 5 of the UN model. Bringing it into alignment with Rev 7, it does have a substantial impact, especially on physical hazard class definitions. You're going to see changes to terminology, just because you're updating to a newer revised edition.

In addition, there have been a lot of refinements to certain subparts and subchapters of the UN model, and in particular flammable gases. You're going to see incorporation of pyrophoric gases into the flammable gases chapter. And this sounds small, but it's actually kind of significant because when the United States -- I'm taking a step *way* back -- when the United States adopted GHS back in 2012, pyrophoric gases were not part of the third revised edition. The United States added them as like a subset, what they called a hazard, not otherwise classified. And when Canada implemented GHS in 2015, it opted to do something similar to continue that continuity in what they called a physical hazard, not otherwise classified. And then a few UN provisions later, pyrophoric gases are added to flammable gases.

This is kind of bringing everybody up to speed, putting it rightfully into the flammable gases chapter, so that's happening here. You're also seeing a substantial revision to the Flammable Aerosols chapter, where now we're incorporating non-flammable aerosols and we're renaming the chapter to Aerosols.

And then that Rev 8 element, which is an interesting add-on. It is incorporating into that same Aerosols, that discussion of chemicals under pressure. And this is the Rev 8 inclusion of chemicals under pressure. And this was done according to the Gazette II notice to align with the *potential* inclusion of that into a final rule under OSHA [the U.S. Occupational Safety and Health Administration], which we have yet to see. You're going to see the expansion of criteria and methods for oxidizing solids. And then to the safety data sheet

(SDS), we're going to see changes to Section 9, which are physical and chemical hazard properties content; changes to Section 14, which is transportation information; and then some amendments to hazard statements around combustible dust, which again -- Canada incorporated combustible dust into its legislation to align with what the United States opted to do when *it* incorporated combustible dust under hazards not otherwise classified. So those amendments to combustible dust are just additional consideration for some other hazard statements that might be viewed as appropriate when communicating combustible dust hazards. That is the majority of the highlights with respect to this update.

LLB: To my ear, that sounds like a lot. And I know that as a mere mortal, Karin, as compared with your superior understanding of the nuances of these regulations, what in your mind is most likely to be *least* understood as having perhaps much more great commercial impact than one might anticipate? I mean, the physical hazard changes strike me as significant, but I'm, again, not in a position to assess these things the way you are.

KFB: No, that's 100 percent correct. The changes to physical hazards are going to be by far the most difficult to navigate, not because -- the categories themselves are pretty clearly defined, but you have movement around. You have incorporation of pyrophoric gases into its own chapter. If you were previously receiving or labeling or writing an SDS for pyrophoric gas, it didn't have the same look and feel as it will now. That's going to create some changes.

There was a lot of discussion when the United States and Canada implemented back in 2012, 2015, that concept of aerosols. You are going to see now that official acknowledgment that aerosols exist in this new chapter with non-flammable aerosols, and then you're going to see further differentiation with those gases under pressure. And I could see that being very confusing to folks that are either on the receiving end of that or folks that are in that space having to now navigate it and properly classify and label and update your SDS.

But the little subtlety that I think is going to get everybody in the end, it's going to be the strangest thing. It's the precautionary statement. The reason why I say that is because when the United States adopted GHS, they codified the precautionary statements in the appendix. Canada did not. Canada opted to refer you to the UN models for the appropriate precautionary statements. Every single time the UN model is updated, there is revision, and refinement, and amendment to those precautionary statements. That's the one thing I find when I review SDSs is the precautionary statements are wrong. I say that with a little jest, but I think what people need to appreciate is that the precautionary statements will change, and they are for the better. They don't just make a change because they're feeling slaphappy at the UN GHS subcommittee.

LLB: Right.

KFB: They make a change to clarify the verbiage, to make prevention and response and storage and handling clearer to the end users. Any time you have a revision or update -- and we're talking for Canada several revisions forward -- those precautionary statements most likely have changed for every single hazard class that you are probably dealing in.

LLB: Yikes. Sounds like a lot of change.

KFB: A bit. It's a bit.

LLB: Maybe it'd be helpful for our listeners if we drop back for a moment and contextualize this Canadian initiative. We've been on a lot of podcasts together, Karin, and I appreciate that most countries seem constantly to be revising comparable regulations, and my sense is that the global business community as a whole is uniquely *not* harmonized with regard to packaging, labeling, and SDS provisions.

That's just my observation. And the reason I'm stressing on this is because of the name: Globally Harmonized System of Classification and Labeling. And it's kind of like anything but. Is that a fair statement? And are we looking at in perpetuity a system where we are *not* harmonized and we will always be playing a bit of catch-up to align state or country regulations with the UN GHS standard?

KFB: It is an inconvenient reality, and it is incredibly confusing, and it's difficult to track. It is very difficult to keep up with how many countries are implementing, in the middle of revising, updating, making changes, incorporating GHS and non-GHS elements, and then ensuring as a global -- as you work in a space where you are responsible for communicating in the United States to other countries, the European Union member states, or Canada, or Mexico, or even now Latin America, it is difficult. But I do not believe we will *ever* see everybody harmonized exactly with the UN, and it's just kind of becoming par for the course. We're all trying to have to accept that *is* the reality and then just try to keep track the best we can with what's happening in the UN space.

LLB: That may be the best we can do. The UN GHS is at Rev 9, and as I understand it, Rev 10 is expected later this year. What does that mean for these Canadian regulations? And how are other major developed countries faring with regard to implementing GHS on a real-time basis? My sense is that they are literally all over the map, some countries closer than others. How is, in the grand scheme of things, the Canadian implementation coming along?

KFB: Canada opting to adopt Rev 7 actually puts it nicely with some of the other key global trading partners. We've seen in the last couple of years several countries either propose to implement or propose to revise, and most are hitting on Rev 6 or Rev 7. I haven't seen others going straight to Rev 8 or even Rev 9. I'm seeing most countries landing in that Rev 6, 7 space. Canada, in choosing to do that -- which it *had* proposed to do that several years back, so it's not a surprise -- but it *does* fall in line with what's happening in Australia. It does fall in line with what's happening in New Zealand. We're seeing the same somewhat disconnect in the European Union.

Brazil and Latin America are warily following on Rev 6 and 7 as we see new countries coming into the GHS. In that regard, we are seeing some continuity. With respect to the UN model, Rev 10 is due out this year. The UN subcommittee meets every six months, so they just met in December, and the notes are available on the website. The committee will meet again in July, and we do expect to see Rev 10. Now the bigger question I think that's in everyone's head is what's happened between Rev 7 through Rev 10, and are there significant changes in those updates that would be beneficial to the parties that are not part of Rev 8, 9, and eventually 10? And what you're seeing in Canada and in the notice of proposed rulemaking in the United States is consideration for those Rev 8 elements that were viewed as substantial, and incorporation of those Rev 8 elements into their updates. I think that says a lot about what the United States and Canada are doing, especially their engagement at the UN subcommittee level. But it also speaks to just understanding and keeping track of what's changing in the UN, and how is that change going to be impacting future updates in other countries?

LLB: Got it. Okay. I'm guessing -- and this may or may not be a fair statement -- but even though countries are always struggling to align with the most recent UN version, whatever dissimilarity exists between/among countries' implementation of the UN model is still better than the disarray that would prevail without the current system. In other words, it's better this way than not having any standard at all, for sure, and perhaps looking at it in a light most favorable to the system, perhaps the ability to come into compliance and align with the UN standard -- the speed with which countries are able to do that is shortening. Is that a fair statement?

KFB: Absolutely, yes. And I think --

LLB: Oh, good.

KFB: -- and I think, too, what you're seeing is the dissimilarity, as you noted, has become less apparent. When you think back to even a decade ago, when we were looking at what the United States and Canada were talking about, we had two totally different systems for classification and labeling. We didn't even agree on symbols, the use of symbols --. To come around to where we are now, we are seeing a global use of the same symbols. We are seeing a global use of the same signal words, because back a decade ago, we didn't even agree on *that*. Even though there is still dissimilarity because of the revised edition you updated or whatever you implemented, or maybe you didn't adopt all the hazard classes and categories in the UN model, you still have the same hazard statements, the same precautionary statements, somewhat, same pictogram, same hazard, same signal words. That's creating a global understanding that I don't believe existed prior to where we sit now in 2023.

LLB: Okay, good. I had mentioned at the beginning of our conversation that the phase-in period is three years, presumably three years from January 2023. And to the extent -- again, Karin, correct me if I'm wrong -- that the final revisions are quite similar, if not virtually identical to the *proposed* revisions that were issued in 2020. That effectively means the regulated community has had and will continue to have a fairly extended period to align their classification and labeling programs with these revisions. Is there any sense that these phase-in periods are too long, given the rapidity of the changes? Or is it just about right? Because that's effectively six years from when the proposal came out in 2020 to the conclusion of the phase-in period in 2026.

KFB: I don't think the regulated community would view it as too long. We typically don't start to look at or revise until the legislation is actually implemented, so when the Gazette II notice was published. Actually three years, I think if I recall, Gazette I -- I don't recall that they had a three-year proposal, but I could be wrong. This may actually be longer, and it could be based on comments that folks provided back saying, "We're going to need a little bit longer than what might have originally been suggested." But you're right. They will have theoretically had over six years. And what was published in Gazette II was nearly identical to what was proposed in Gazette I. None of this should be shocking or surprising to the regulated folk, but we are naturally procrastinators.

LLB: That's one you never know until it's issued, that something is going to change.

KFB: That's right. And you don't want to start to implement a change and then see that something got revised between what you thought was going to happen and what actually did happen. Most will not have -- they will have been thinking about it, but will not have started making

any kind of plan to update or revise until the actual Gazette II notice was published, so three years seems fair.

LLB: Yes. No, that's probably on average -- well, I don't want to say it probably is. Is that the average implementation period in most countries?

KFB: No, I'm actually seeing a bit of a hot mess across the globe.

LLB: Why should the implementation be any different from anything else about GHS?

KFB: Yes, I believe two years was what they did in Australia. We're waiting to see what the implementation period will be for Brazil. We expect to see something early in this year. Chile's was pretty substantial, but I think that's because they implemented huge, sweeping change. They gave about two or three years, depending on where you were with your -- whether you were part of an industrial product or non-industrial product.

I think New Zealand gave three to four years. It may have even been four years. But that, again, is the nature of the change, because New Zealand hadn't updated since the original GHS, around 2001, and they went to Rev 7. So it's a fairly --

LLB: Oh my goodness!

KFB: Yes. They needed a generous timeline to accommodate that. That's a big, big change. It really depends on the nature of the change. In this regard, I look at Canada as -- it *is* a change, but it's not as substantial as, say, what happened in New Zealand, or even in Colombia and Chile, where they didn't *have* GHS before, and now they're implementing GHS. They're giving more generous timelines to accommodate that.

LLB: Based on what you've described and based on your review of these revisions, what are some of the real-world disruptions that you anticipate as a consequence of the changes? You had mentioned aerosols, for example. Is that an area likely to be confusing and potentially disruptive if people don't get it right?

KFB: Yes, definitely. And I think, too, any time there's a change to the SDS, even if it doesn't seem substantial. If you make a change to what belongs in Section 9 content, then every party needs to review and update the SDS. If nothing else, it's just to incorporate the appropriate physical hazard, those physical-chemical properties in Section 9. Everybody has physical-chemical properties in Section 9.

I think that there may be some people who are underappreciating those types of changes. And then Section 14. Everybody has Section 14. You will have to update your SDS. If nothing else, it's just to look at how your existing template compares to the changes that are required and update to align. And it may not result in a substantial change to the actual physical-chemical properties, but it is a change.

And then those aerosols, that's a big one. If you're in the space of chemicals under pressure, aerosols, flammable aerosols, non-flammable aerosols, you will definitely need to appreciate that your label will look different, and your SDS could look different. Everything will need to be reviewed, at least, and then confirmed agreement and alignment with the way that the chapters have been revised over the last several years.

LLB: I suspect, Karin, because you get a lot of calls from a lot of people all over the world, what are you telling clients right now to do to both anticipate and get ahead of these revisions? Three years sounds like a long time, but I also appreciate that classification and labeling takes a long time to implement. What are you telling clients right now to do to beat the rap, as it were?

KFB: Yes, definitely don't wait. Don't wait until year three to then realize, "Oh, I needed to update my SDS and label." Definitely take a look at your -- however you're producing your SDS now, ensure that if you're using a third-party service provider, that they've made the appropriate changes, and then start to look at whether or not you have a change to your hazard class in your labeling content, because relabeling is a substantial activity, and even a small change in a precautionary statement could result in the necessity to relabel. You have to do some data gap and look at the extent of which this change from the existing to the new revised impacts both your SDS and label content, and then start to put together an action plan for ensuring that these activities are carried out promptly.

You can start to do it now. Nothing is holding you back. And then understand that you may have communication issues, especially with a trading partner, because in the United States, we had a pretty good alignment with Canada. This is going to create a little bit of a disconnect with Canada. Prepare for some of those conversations where your U.S. SDS may look different from your Canadian SDS because of these changes, and then start to address how you're going to manage some of that if you're -- especially if you're an importer of record in one country or the other, you're going to need to address some of those dissimilarities or those variances that will now occur.

LLB: Good advice. Is enforcement likely to be an issue? I think there's a perception in my own experience working with the Canadian authorities is that I think they tend to be very receptive to industry's challenges and very reasonable in sorting out issues of noncompliance. But *is* enforcement an issue? Is that a big area of concern, based on some of the feedback that you've had from clients over the years on these GHS issues?

KFB: No. As you know, Canada is very reasonable. They will work with you. I think the only thing that catches people off guard with *this* is Canada has a separate way of addressing confidential business information (CBI). It is managed differently than the trade secret provisions under OSHA and with the CBI policies and procedures under the -- I think it's the Hazardous Materials Information Review Act, you do have to submit a SDS as part of that substantiation process. That's where I think most people get hung up, because during that review process, they will look at your SDS and ensure that it complies with the requirements. If there are elements on that SDS that they view during the CBI review process as non-compliant, they will ask you to revise and update, and that could impact your CBI review, the timing of that.

That's the only time I've really heard that you get some specific feedback, and there is something that *could* impact your business in a more forceful way. But in every other circumstance, it's always been a very cooperative type arrangement. And SDS and SDS review is a difficult process. It's hard to look at somebody's SDS, and unless it's something very obvious, it's difficult to question the compliance aspect of it. Did you classify something wrong? It's hard to audit that, even in the United States. It's a difficult thing.

LLB: It's a good insight, though, on the CBI thing. I had not appreciated that distinction. I'm sure our listeners are appreciative of that, Karin, thank you.

KFB: Sure.

LLB: And since I have you, do you have any insight as to when the revised HCS [Hazard Communication Standard] will be issued here in the United States? I know we've been kind of anxiously anticipating seeing it in the FR [*Federal Register*]. Any thoughts on that?

KFB: I have been anxiously tracking it.

LLB: I know, every day.

KFB: Every day. When OSHA spoke at some conferences in the fall of 2022, they indicated it would be here before the holidays, but that did not happen. I think some of us were expecting OSHA to issue that rule before Canada. Seeing Canada issue the rule in January kind of indicates that OSHA's still a little behind on what it expects to do. And the current *Regulatory Agenda*, which was recently published, is indicating March, but it's not -- it just says March 2023, so we will keep looking for it, but it is definitely delayed. And I think if people appreciate that OSHA has been talking about updating the HazCom rule since 2014 and the actual notice of proposed rulemaking was about two years ago. So hopefully this year, because it would be nice to see the United States and Canada come together with Rev 7, specific elements of Rev 8, and in the same three-year transitional period. It does seem intense for both U.S. and Canadian businesses, but having the same goal and the same achievable timeframe will make alignment easier for both of -- everybody involved in this space. I'm hoping that's what we see, but I don't know. We'll wait until March, I guess.

LLB: Yes. No, that's a very good observation. I hadn't appreciated that OSHA indicated that it would be out *before* the holidays because here it is, February already. We'll look for it in March, and we'll look to have you back in the studio, Karin, to kind of highlight what I think will be a very consequential rulemaking. The final revisions have been long anticipated and are expected to be quite consequential. We'll look forward to hearing your thoughts on it, when and if it comes out this year.

KFB: It will be substantial, so it'll be a big change.

LLB: I know we did a what we call here at the firm, our Firm Clients and Friends memo, on the Canadian revisions, and I think that came out what, last month, Karin?

Yes. Right after the Gazette II was published. Yes.

LLB: Are there other resources that you would recommend to our listeners with regard to understanding the Canadian changes? And if so, where might they access those resources?

KFB: Absolutely our podcast.

LLB: True. Good point.

KFB: Our webinars on SDS are already noted, but I know that there have been a lot of proposals on Health Canada's side, so be looking to Health Canada to be giving some updates and some webinars on this content. The wonderful thing about Health Canada is that everything is issued in English. It's easily found on their website, but also because the United States and Canada work very closely together, I wouldn't be surprised that if and when the United States *does* update, you'll see a lot on the U.S.'s side talking about any disconnects and what they call variances. And we're working very closely with Canada to help navigate that

space. I always look to the U.S. website as well, because there is a very close alignment between the two. And then, when in doubt, if you're looking through the Hazardous Products Regulation and you're not quite clear on what was meant or intended, go to the UN GHS website and take a look at Rev 7 or Rev 8, because a lot of the content and context of each of the hazard classes is in the UN model, and it does help to clarify any issues that you might be running across, especially if you're trying to navigate that aerosol, non-flammable, gas under pressure space.

LLB: Got it. The Canadian website, the UN website, and of course our own website, www.lawbc.com. And when all else fails, I'm sure you join me, Karin, in suggesting that people consult with you because I do regard you as one of the world's foremost authorities on these issues because no one knows the space better than you do.

KFB: Well, I definitely try.

LLB: You try, and you succeed.

KFB: Thank you. Always, if you need to send me an e-mail, always send me an e-mail, and I'm happy to assist.

LLB: Excellent. Well, Karin, thank you so much for coming into the studio, for explaining these Canadian revisions, and giving us a sneak peek on when we might expect the final HCS out in our own *Federal Register* later this year.

KFB: No, my pleasure. Thank you, Lynn.

LLB: Thanks again to Karin for speaking with me today about the Canadian HPR revisions to align with the seventh revised edition of the GHS. As always, Karin has made a complicated regulatory matter that has huge implications for business understandable and given our listeners a clearer explanation of why you should care.

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