Independent Lubricant Manufacturers Association

2016 Annual Meeting

Safety, Health, Environment & Regulatory Affairs Committee Meeting

October 16, 2016
OSHA Penalties and Enforcement Metric

OSHA Electronic Reporting Rule
OSHA Fines and Enforcement Have changed

- OSHA increased penalties 78% as a result of “Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015”
  - First adjustments since 1990, no legislative history
  - Effective August 1, 2016
- Willful violations maximum from $70,000 to $124,709
- Failure to Abate and Serious violations - maximum penalties from $7,000 to $12,471
- OSHA-approved state plans that must adopt penalties that “are at least as effective”
  - No express deadline to complete this process
  - Some state OSHA plans resistant to increase fines
OSHA Penalties & Enforcement

• OSHA enforcement metric has changed
• OSHA used to measure effectiveness of enforcement program based on volume of inspections for inspectors
• No longer the case
• New program does not incentivize quantity
• Assigns Enforcement Units (EU) to certain inspection activities, example:
  – 8 EUs for “significant cases” where fine is in excess of $100,000
  – All inspections get at least 1 EU, but opportunity to add to it depending upon complexity of inspection
Electronic Reporting & Incentives

• OSHA published “Improve Tracking of Workplace Injuries and Illnesses” rule in May

• Two major parts:
  – Mandates electronic submission of injury and illness data to OSHA (then publically posted)(effective January 1, 2017)
  – Instructs employers to inform employees of right to report and employers may not implement drug testing or incentive programs that could potentially dissuade injury reporting (effective November 1, 2016)
Electronic Reporting

• Currently, employers with more than 10 employees must record each work-related injury/illness on OSHA form 300 “Log of Work-Related Injuries and Illnesses”
  – a recordable injury or illness under OSHA is one that requires medical treatment beyond first aid, as well as one that causes death, days away from work, restricted work or transfer to another job, or loss of consciousness

• Prepare an incident report on Form 301

• Prepare Form 300A –Summary of Work Related Injuries/Illnesses (must post in workplace Feb. 1-April 30 yearly)

• Now, depending upon company size, certain info. must be submitted electronically to OSHA for review and public posting
Electronic Reporting

• Employers with 250 or more employees must submit Form 300A for 2016 by July 1, 2017

• Starting July 1, 2018, must submit Forms 300A, 300, 301 electronically

• Employers with 20-249 employees in certain industry sectors (captures ILMA members) must form 300A by July 1, 2017

• Website to submit data supposed to go live February 2017

• State plans must develop “substantially similar” reporting requirements
Anti-Retaliation & Incentives

• Rule requires that employers inform employees of their right to report workplace injuries
• Must establish a “reasonable procedure” for reporting
• A procedure is not appropriate if “it would discourage a reasonable employee from accurately reporting a workplace injury or illness”
• Hard line on incentive programs, concerned they will discourage reporting
  – Even programs that reward safe behavior or no injuries may be problematic
• Hinges upon whether a “reasonable employee” would be discouraged from reporting
Drug Testing

- OSHA concerned that threat of drug testing after an incident will deter workplace injury/illness reporting
- Generally, blanket or automatic testing policies are impermissible
- OSHA asserts drug testing should only be used if drugs or alcohol are the causal or contributory factor to the injury or its “reasonably possible” drugs involved
- Anti-retaliation provisions go into effect November 1, 2016
  - Supposed to be August 10, but “voluntarily” moved
- Litigation pending in U.S. District Court in Texas ( Texo ABC/AGC, Inc. et. al. v. Perez ) challenging incentive program/drug testing as arbitrary and capricious/abuse of agency power
OSHA Litigation

• National Association of Manufacturers - Waiting for judge to rule, he guessed a decision on October 31
• May appeal to 5th Circuit depending upon outcome
• Possible enforcement reprieve from DOL in the interim
Titanium Dioxide

John Burke
Houghton International
ILMA 2016 Annual Meeting
SHERA Committee

HCS 2012 Update

John K. Howell, Ph.D., GHS Resources Inc.
Dates: **No changes**

- **June 1, 2016**
  - Update alternative workplace labelling – (f)(6)
  - Update hazard communication programs as necessary – (h)(1), and
  - Provide additional employee training for newly identified physical or health hazards – (h)(3)

- **Manufacturer or importer with existing stock:**
  - Must use HCS 2012 compliant labels, unless
  - “reasonable diligence and good faith” efforts can be demonstrated

- **June 1, 2017**
  - All manufacturers and importers: products must be HCS 2012 labeled
Articles

Normal conditions of use and foreseeable emergency and employers exposed to chemicals which can pose a physical hazard or health risk

• A manufacturer or importer must make a reasonable determination of the known use/exposure downstream (e.g., cut, sanded, welded)

• Article definition 29 CFR 1910.1200 (c) - A manufactured item other than a fluid or particle:
  – (i) which is formed to a specific shape or design during manufacture;
  – (ii) which has end-use function(s) dependent in whole or in part upon its shape or design during end-use; and
  – (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of the HCS), and does not pose a physical or health risk to employees
Lithium Batteries

• News reports indicating fires and explosions
• OSHA has received inquiries (both from U.S. and International) asking whether or not Li-ion batteries are covered under HCS 2012
  – Are L-ion batteries and “article” under paragraph (c)?
  – Are they exempt from labeling under (b)(6)(ix)?
• OSHA has also been asked whether an SDS is required for Li-ion batteries
  – Agency is working on responses
Hazards Not Otherwise Classified (HNOC)

- Hazard Communication Directive CPL 02-02-79 states: “The manufacturer, importer or distributor may included hazard symbols on the label or SDS for HNOCs as long as that symbol is not an HCS 2012 pictogram and does not conflict or cast doubt on the information that is required”
- Working to harmonize with our Health Canada partners
- Change in guidance: OSHA will allow use of the explanation mark pictogram for HNOCs (Note: Phrase “Hazard Not Otherwise Classified” or “HNOC” also needs to appear below the explanation mark pictogram)
Hazard Communication Violations
12/01/13 – 09/01/16 (Federal data)

• **16,252** total violations
  – Serious, **9,127**; Willful, 8; Repeat, **397**; Other, **6,615**

• Most cited:
  – 1910.1200(e)(1) – written program
  – 1910.1200(h)(1) – information and training program
  – 1910.1200(h)(3) – training on shipped labels, workplace labeling & SDS
  – 1910.1200(g)(8) – maintain MSDS/SDS and readily accessible during each work shift
  – 1910.1200(f)(5) – container labeling does not conflict with DOT requirements
HCS vs. DOT Labeling

- Applicability of OSHA Hazcom Labelling on DOT-placarded bulk tanks
- Applicability of OSHA Hazcom labelling on tanks containing material not requiring DOT placarding
- Current guidance in CPL 02-02-079
  - Same guidance since 1994
  - While in transport, HCS 2012 labelling is not required on shipping containers, even when DOT’s Hazardous Material Regulation does not require labeling in transportation
  - OSHA does require HCS 2012 labeling both before and after transportation in commerce (HCS 2012 label in included in shipping papers, BOLs, or by other technological or electronic means so that label is immediately available in printed form on the receiving end of shipment
Use of Concentration Ranges

• A concentration range may be used:
  – When a trade secret claim has been made (for the exact percentage)
  – When there is batch-to-batch variability in the production of a mixture; or
  – For a group of substantially similar mixtures with similar compositions and hazards

• Trade secret status may be claimed for the exact percentage composition but not for concentration ranges

• When classifier uses a range of concentrations, they:
  – Must be sufficiently narrow to meet the intent of disclosing the actual concentration
  – And must be an accurate representation of the variation

Note: the classification must represent the highest degree of hazard that the mixture could present

(https://www.osha.gov/dsg/hazcom/hazcom-faq.html#collapse33)
When may chemical manufacturers/importers use concentration ranges rather than an exact percentage composition in Section 3 of the SDS, and how does this apply to trade secrets?

• A. In 29 CFR 1910.1200, Appendix D, OSHA requires that chemical manufacturers and importers disclose in Section 3 of the SDS, *Composition/information on ingredients*, the chemical name and concentration (exact percentage) of all ingredients present in a mixture which are classified as health hazards. Ingredient concentrations are required to be disclosed if they are present above their cut-off value/concentration limits or if they present a health risk below the cut-off value/concentration limits. The concentration (exact percentage) must be specified unless a trade secret claim is made, when there is batch-to-batch variability in the production of a mixture, or for a group of substantially similar mixtures with similar chemical composition. In these cases concentration ranges may be used.

• Batch-to-batch variability occurs when the mixture has a set formula but there may be some very small differences among the batches that occur during the production process. To use a range in this situation, these variations must have no impact on the hazard of the overall mixture. For example, the formula may require 4.0 pounds of a chemical, but as produced the final product varies by ± 0.1 pound from that specification. In this case, assuming the high end of the variation does not change the hazard classification, the SDS preparer may choose to use either the concentration set in the formula or the concentration range anticipated between the batches.
When may chemical manufacturers/importers use concentration ranges rather than an exact percentage composition in Section 3 of the SDS, and how does this apply to trade secrets?

- In addition, a range of concentrations may be used in situations where a chemical manufacturer or importer may have a line of products that are very similar, but can vary slightly in composition to meet the needs of customers. For example, toner colors may be changed by the amount of pigment present in the mixture. Another example is the blending of dry materials where the ingredients are the same. In these cases, the hazards remain the same, even though there may be small differences in the amounts from product to product. For these substantially similar mixtures, providing that the composition differences are minimal and the hazards remain the same, concentration ranges may be used for multiple, similar products.

- The standard allows chemical manufacturers and importers to claim the specific chemical identity and/or the exact percentage of a hazardous ingredient in a mixture as a trade secret. If the exact percentage of a hazardous ingredient in a mixture is withheld, a concentration range may be used in its place. The use of a concentration range in this case would assist downstream users in providing appropriate protections and, at the same time potentially eliminate requests from users for disclosure of the trade secret in accordance with §1910.1200. Trade secret status may be claimed for exact percentage composition but not for concentration ranges. For example, when using a concentration range due to batch-to-batch variability you cannot claim the range as a trade secret on the safety data sheet.

- In general, if a classifier uses a range of concentrations on the SDS, OSHA expects that the range will be sufficiently narrow to meet the intent of disclosing the actual concentration range, provided that the range is an accurate representation of the variation. A range of 1%-99%, for instance, would not be an acceptable range. Concentration ranges, if used, must be based on the information available to the classifier, such as analysis results, product specification, or nature of the process, and the high end of the range used may not change the reported hazard classification.
Hazard Classification of Mixtures

• **Some** manufacturers seem to have a misunderstanding on proper hazard classification of mixtures, per Sven Rundman III (09/27/16):

• Products considered mixtures must be classified using the requirements for mixtures Appendix A.0.4
  – Each hazardous ingredient in a mixture must be listed in Section 3 of the SDS if the content is greater than the cut-off values.
  – Requirement to list ingredients that are themselves health hazards is found in Appendix D, and the cut-off values for each health hazards are found in the individual hazard chapters in Appendix A.
GHS UN Sub-committee Update

• UN Sub-committee on GHS activities ongoing: expected in December
  – Flammable gases – working paper for Geneva meeting proposes updates to:
    • Classification criteria
    • Labelling elements
    • Decision logic
  – Combustible dust: new draft annex being written
  – Precautionary statements working paper: to be reviewed
  – “Global list” - informal paper updating sub-committee expected
  – Small packages working paper
  – Other issues: nanomaterials; classification of AN fertilizers; non-animal testing; revisions to Explosives chapter
GHS HCS 2012 Rule Update

• Materials under development:
  – Safety Data Sheet Guidance
  – Model training program (slides, instructions)
  – US/Canada fact sheets

• Regulatory agenda
  – HCS 2012 update: OSHA will consider updates through Purple Book, rev 6
    • Aerosols, desensitized explosives, skin/eye classification updates
  – Discuss other issues: shipped vs. manufactured dates
  – Long term action

• Fall stakeholder meeting to discuss rulemaking issues to be held at Francis Perkins Building day after DOT PHMSA meeting, November 16, 2016
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SHERA Committee

REACH 2018 Update

Stephan Baumgärtel, Ph.D., German Lubricant Manufacturers Association
John K. Howell, Ph.D., GHS Resources Inc.
REACH Registration Statistics

- 140,370 substances were preregistered for 2010, 2013, 2018, depending on volume
- 9/2016: x,xxx substances registered
- Approximately 130,000 substances still not registered!
- Costs: €50,000 - €2,000,000 per substance, depending on volume/hazard level
- Impact on formulators?
Dr. S. Baumgärtel

German Lubricant Manufacturers Association
Chair of UEIL HSE working group

News from legislation and technology trends in the EU.

Dr. Baumgärtel 21.10.2016
REACH Registration Statistics

- 140,370 substances were preregistered for 2010, 2013, 2018, depending on volume
- About 15,000 substances are registered (some as intermediates)
- Approximately 130,000 substances still not registered, but many of them are not placed on the market
- Estimated number of substances placed on the market: 30,000-40,000
- Costs: €50,000 - €2,000,000 per substance, depending on volume/hazard level.
REACH Registration (as of May 2016)

• Breakdown by registration type

<table>
<thead>
<tr>
<th>Substances</th>
<th>Registrations</th>
</tr>
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<tbody>
<tr>
<td>full registration</td>
<td>36428</td>
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<tr>
<td>intermediate</td>
<td>9687</td>
</tr>
<tr>
<td>Transported isolated interm.</td>
<td>7146</td>
</tr>
<tr>
<td>On-site isolated interm.</td>
<td>3292</td>
</tr>
</tbody>
</table>

• Breakdown by role in the supply chain

<table>
<thead>
<tr>
<th>Role</th>
<th>Registrations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturer</td>
<td>17189</td>
</tr>
<tr>
<td>Manufacturer and Importer</td>
<td>5801</td>
</tr>
<tr>
<td>Importer</td>
<td>12097</td>
</tr>
<tr>
<td>Single Rep. of non-EU manuf.</td>
<td>10286</td>
</tr>
</tbody>
</table>
Others

- GLAPS
- Lead classification as CMR
- Multi language labels / folded labels
- Art. 45:

  HARMONISED INFORMATION
  RELATING TO EMERGENCY HEALTH RESPONSE AND PREVENTATIVE MEASURES

  PART A

  GENERAL REQUIREMENTS

- TSCA?
Formaldehyde / other chemicals

• 1999: approx. 100 active substances/biocides available
• Today: 27
• 7 of 27 are formaldehyde release agents
• As of 2016, formaldehyde is now classified as CMR 1B
• Customers now hesitate to use formaldehyde releasing biocides although formaldehyde concentration is far below threshold.
• Alternative technology: high pH products, sometimes based on dicyclohexylamine.
• BHT / Benztriazole: CoRAP list of potential SVHC substances, suspected endocrine disruptors
• Boric acid reaction products: still used, but declining.
<table>
<thead>
<tr>
<th>Chemistry</th>
<th>Addition</th>
<th>Primary Efficacy</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formaldehyde Releasers</td>
<td>conc &amp; tankside</td>
<td>bacteria</td>
<td>formaldehyde</td>
</tr>
<tr>
<td>Pyridinethione</td>
<td>conc &amp; tankside</td>
<td>fungi</td>
<td>Iron complexing</td>
</tr>
<tr>
<td>Thiocyanobenzothiazole</td>
<td>tankside</td>
<td>fungi</td>
<td>sensitizer</td>
</tr>
<tr>
<td>Isothiazolones</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• BIT</td>
<td>tankside tankside</td>
<td>both both</td>
<td>Corrosive, sensitization potential, formulating into</td>
</tr>
<tr>
<td>• CMI/MIT</td>
<td></td>
<td></td>
<td>concentrates difficult, short lifetime. BIT: not</td>
</tr>
<tr>
<td>OPP</td>
<td>conc &amp; tankside</td>
<td>bacteria</td>
<td>environmental</td>
</tr>
</tbody>
</table>
Global REACH

Tuesday, 10:15 am – 11:15 am

Industry Session with James Eggenschwiler, Director of Global Trade, The Redstone Group

New Developments in the "Global REACH" Landscape: Asia Pacific and Beyond

Gain important insight into new legal developments and the steps required (by local manufacturers, importers or foreign suppliers) to make or keep chemical products market eligible. Highlights include key enforcement strategies used by local authorities and the growing upstream risks to export suppliers for importer non-compliance.
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WHMIS 2015/Mexico Update
John K. Howell, Ph.D., GHS Resources Inc.
WHMIS 2015

• Key dates:
  – now through June 1, 2017: suppliers and employers can use WHMIS 1988 (old system) or WHMIS 2015
  – June 1, 2017:
    • Manufacturers and importers must use WHMIS 2015
    • Distributors and employers can use WHMIS 1988 or WHMIS 2015
  – June 1, 2018
    • Manufacturers, importers and distributors must use WHMIS 2015
    • Employers can use WHMIS 1988 or WHMIS 2015
  – December 1, 2018: everyone uses WHMIS 2015

• Remember: significant differences in protection of trade secrets in U.S. vs. Canada!
WHMIS 2015

• Phase 1 Technical Guidance Released June 29, 2016
• Purpose:
  – Provide guidance on the *Hazardous Products Act* and *Hazardous Products Regulations* (together, WHMIS 2015) to suppliers of hazardous products destined for Canadian workplaces
  – Provide suppliers with information on the *Hazardous Materials Information Review Act* and its regulations and mechanisms to protect confidential business information while still disclosing critical hazard information to workers.
• Health Canada believes it is possible to meet both U.S. and Canadian requirements using a single label and SDS.
Phase 1 Technical Guidance

Consists of three sections and an appendix:

• **Section A** – Introduction

• **Section C** – Regulatory Requirements
  – Part 1 – Interpretation
  – Part 2 – Classification of a Product, Mixture, Material or Substance
  – Part 3 – Labeling
  – Part 4 – Safety Data Sheet
  – Part 6 – Additional Requirements

• **Appendix A** – Confidential Business Information
Part 1 Definitions - “Manufacturer”

“manufacturer” means a supplier who, in the course of business in Canada, manufactures, produces, processes, packages or labels a hazardous product and sells it.

• A “manufacturer” is different from an importer. An importer is a supplier who brings a hazardous product into Canada, but does not sell the product. If an importer does modify a hazardous product that they imported (for example, by repackaging or relabeling it), and subsequently sells the modified hazardous product, then the importer meets the definition of a “manufacturer” under the HPR.

• A manufacturer is also different from a distributor. A distributor is a Canadian supplier to whom a hazardous product was sold, who resells the hazardous product without modifying it in any way. If a distributor does modify a hazardous product that they purchased (for example, by repackaging or relabeling it) and subsequently sells it, then the distributor meets the definition of a “manufacturer” under the HPR.

• The term “supplier” is defined, in section 2 of the HPA, as “a person who, in the course of business, sells or imports a hazardous product”. Therefore, all of the above-mentioned parties (i.e., a manufacturer, an importer or a distributor of a hazardous product) are considered as “suppliers” under the HPA.
Part 1  Definitions – Hazardous Ingredient

“hazardous ingredient” means an ingredient in a mixture that, when evaluated as an individual substance, is classified in a category or subcategory of a health hazard class.

• **Hazardous ingredient** is an ingredient in a mixture which, when evaluated as an individual substance against the criteria of all health hazard classes of the HPR, is classified in at least one category or subcategory of a health hazard class.

• It is important to note that hazardous ingredients that contribute to the classification of a mixture in at least one category or subcategory of a health hazard class are required to be disclosed under item 3 of the SDS.
Definitions from the HPA (Section 2)

“mixture” means a combination of, or a solution that is composed of, two or more ingredients that, when they are combined, do not react with each other, but excludes any such combination or solution that is a substance.

“substance” means any chemical element or chemical compound — that is in its natural state or that is obtained by a production process — whether alone or together with

• any additive that is necessary to preserve the stability of the chemical element or chemical compound
• any solvent that is necessary to preserve the stability or composition of the chemical element or chemical compound, or
• any impurity that is derived from the production
Part 1 Definitions – Mixture/Substance

For example, sodium hydroxide is a hazardous substance by virtue of its chemical nature. Any change to its chemical nature that results in a substance or mixture other than sodium hydroxide being formed, would result in hazards based on the newly formed substance or mixture. For example, if sodium hydroxide is mixed with an acid resulting in a salt being formed, the hazard assessment is based on the salt which could pose different hazards than those posed by sodium hydroxide or by the acid. (p.30)
For a hazardous product that is a mixture:

- The following information is required for each ingredient in the mixture which is, by itself, classified in any health hazard class and is present at or above the cut-off/concentration limit that is designated for the category or subcategory in which it is classified, or is present in the mixture at a concentration which, in accordance with subsection 2.5(1) of the HPR, results in the mixture being classified in any health hazard class:
  - Chemical name *
  - Common name and synonyms*
  - CAS registry number and any unique identifiers*
  - Concentration*

- Unless a CBI claim to protect the required information element has been filed under the HMIRA. In this case, replacement information must appear (refer to the discussion of section 5.7 of the HPR).
Concentration ranges
4.5 If the concentration of a material or substance in a hazardous product is required to be provided on a safety data sheet and the material or substance is not always present at the same concentration, the safety data sheet must provide, in lieu of the concentration of the material or substance, the actual concentration range of the material or substance in the hazardous product.
Appendix 3 – Composition/Information on Ingredients

• Section 4.5 of the HPR specifies that, where a hazardous ingredient is required to be disclosed and it is not always present in a hazardous product at the same concentration, then the actual concentration range of the ingredient in the hazardous product must be disclosed. This provision must be used in all situations where a hazardous ingredient is required to be disclosed and it is present in a hazardous product at a range of concentrations.
Appendix 3 – Composition/Information on Ingredients

• The HPR and the HCS 2012 are also aligned with regard to what is meant by “actual concentration range” (HPR) and “concentration range” (HCS 2012):

• In the HPR, the term “actual concentration range” refers to the range of concentrations within which the true concentration of a hazardous ingredient in a mixture would be expected to fall, given the quality control parameters of the manufacturing process for the mixture.

• The HCS 2012 uses the term “concentration range”, which has the same meaning.

• For the purposes of this Appendix and Appendix 4 to this chapter, the term “true concentration range” is used to represent the concentration range as it is required to be disclosed by WHMIS 2015 and HCS 2012.
Appendix 3 – Protection of Confidential Information

Protection of Confidential Business Information (CBI)

• Canada and the U.S. are aligned with regard to requirements for hazardous ingredient disclosure on SDSs, but the mechanisms to protect CBI are different. In Canada, a supplier must file a trade secret claim with Health Canada under the provisions of the *Hazardous Materials Information Review Act* (HMIRA) to request an exemption from a requirement under the HPA and HPR to disclose specific information, such as the chemical name, the true concentration or true concentration range of a hazardous ingredient. In the U.S., the specific chemical identity and/or concentration (exact percentage) of a hazardous ingredient may be claimed as a trade secret in accordance with paragraph (i) of the HCS 2012 and there is no government review process.

• The Canadian and U.S. requirements can still be met through the use of a single label and SDS for each hazardous product, provided that the requirements set out in the relevant legislation, regulation or rule of each jurisdiction are met.
Appendix 3 – Protection of Confidential Information

Protection of Confidential Business Information (CBI)

When a trade secret claim is filed with Health Canada to protect the chemical name, the supplier must include in the SDS:

• the true concentration or true concentration range of a hazardous ingredient,
• a statement to indicate that a claim was filed,
• the date of filing and the claim registry number.

Once the claim has been approved, the SDS must indicate that an exemption has been granted, the date of the decision granting the exemption and the claim registry number.
Appendix 3 – Protection of Confidential Information

• In the circumstance where a concentration or concentration range is protected, suppliers are encouraged to disclose a replacement concentration range on the SDS that encompasses the true concentration or true concentration range, subject to the following conditions:
  – The hazard classification based on the replacement concentration range must be the same as that of the true concentration or true concentration range; and
  – All other information provided on the SDS must be equally reflective of the true concentration or true concentration range and the replacement concentration range.

• Under the HCS 2012, a concentration range of a hazardous ingredient may not be claimed as a trade secret. When a concentration of a hazardous ingredient or its identity is claimed as a trade secret under the HCS 2012, a statement that the specific chemical identity and/or concentration (exact percentage) of composition has been withheld as a trade secret is required. A replacement range may be provided.
Mexico: NOM-018-STPS-2015

• Introduces GHS revision 5 into Mexico with implementation in 2018
• Significant differences in implementation of GHS between U.S. (rev. 3), Canada (rev. 3, but with trade secret differences) and Mexico (rev. 5)
• As an example, there are differences in hazard classes, e.g.,
  – Aspiration Cat. 1 and 2, not just Cat 1;
  – Acute Toxicity Cat. 5, not just Acute Toxicity Cat. 1 through Cat. 4
  – Skin corrosion/irritation Cat. 3, not just Cat. 1 and 2
• Outlines accreditation system for employers
• More details later this year!
SPCC Expansion

Jeffrey Leiter

ILMA
EPA SPCC Expansion

• “Friendly” Feb. 2016 Settlement of Lawsuit
  – Regulate “hazardous substance” spills under CWA Section 311
  – Aggressive rulemaking schedule

• Since February
  – Assembled project team to begin work on the proposed rulemaking
  – Initiated an Information Collection Request (ICR) to gather information to support the rulemaking
  – Initiated research and analysis of hazardous substances and existing regulatory provisions
  – Secured contractor resources to support project team
EPA SPCC Expansion

• Next Six Months
  – Create hazardous substance spill prevention project website
  – Host 3 public meetings (including Charleston, WV) on the rulemaking (post summaries on website)
  – Continue research and analysis of hazardous substances and existing regulatory provisions
  – Finalize ICR development and seek OMB approval for the information collection
  – Establish a rulemaking workgroup under EPA’s Action Development Process.
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SHERA Committee

Prop. 65 – “Clear and Reasonable” Warnings Update
John K. Howell, Ph.D., GHS Resources Inc.
“Clear and Reasonable” Warnings

• Title 27, California Code of Regulations, Article 6
• Extensive Rulemaking beginning w/ 2014 “Pre-rulemaking” workshop
  – ILMA commented directly and through California Chamber of Commerce
• Adoption of amendments approved August 30, 2016
  – Affected entities can comply with current or use new warning regulations but must comply with new regulations by August 30, 2018
  – http://oehha.ca.gov/proposition-65/crnr/notice-adooption-article-6-clear-and-reasonable-warnings
Notice of Adoption Article 6: Clear and Reasonable Warnings

Sep 2, 2016

On August 30, 2016, the Office of Administrative Law approved the adoption of amendments to Article 6, Clear and Reasonable Warnings, of the California Code of Regulations. This regulatory action repeals all the regulatory provisions of Title 27 of the California Code of Regulations, Article 6 (sections 25601 et seq.), except those added via an emergency rulemaking in April 2016 related to warnings for exposures to bisphenol A in canned foods and beverages (Sections 25603.3(f) and (g)). The action will replace the repealed sections with a new regulation divided into two new Subarticles to Article 6. The repealed and new regulations provide, among other things, methods of transmission and content of warnings deemed to be compliant with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

The regulation will be operative on August 30, 2018. In the interim, businesses may comply with the regulation in effect on August 30, 2016, or the provisions of the new regulation. This will allow for a reasonable transition period for businesses to begin providing warnings under the new provisions.

The regulatory text and the supporting rulemaking documents are available below.
“Clear and Reasonable” Warnings

• Amendments introduce comprehensive changes to:
  – Consumer Product Exposures
  – Occupational Exposures
  – Environmental Exposures

• § 25600 General

  “Nothing in this subarticle shall be construed to preclude a person from providing a warning using content or methods other than those specified in this article that nevertheless complies with Section 25249.6 of the Act”
Consumer Product Exposure Warnings – Methods of Transmission

• Unless otherwise specified in Section 25607, a warning meets the requirements of this article if it complies with the content requirements in Section 25603 and is provided using one or more of the following methods:
  – A product-specific warning provided on a posted sign, shelf tag or shelf sign for the consumer product at each point of display for the product
  – A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser
  – A label that complies with the content requirements in Section 25603(a)
  – An on-product warning that complies with the content requirements in Section 25603(b)
§ 25603 (a) Consumer Product Exposure Warning Content

• Old warning:
  WARNING: This product (area) contains a chemical known to the State to cause cancer, birth defects or other reproductive harm.

• New warning label content:
  WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer [birth defects or other reproductive harm][and birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov

Note: passenger car motor oils and heavy duty oils often contain or may contain listed Prop 65 chemicals.
§ 25603(b) An “on product” warning label, which includes the symbol, the word WARNING, and the words “Cancer [Reproductive Harm] – www.P65Warnings.ca.gov/product” is not required to include the name or names of a listed chemical.
§ 25606 Occupational Exposure Warnings

• (a) A warning to an exposed employee about a listed chemical which meets the requirements of this article if it fully complies with all warning information, training and labeling requirements of the Federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety Requirements (Title 3, California Code of regulations section 6700 et seq.) meets the requirements of this article.

• (b) For occupational exposures to chemicals not covered by subsection (a), warning may be provided consistent with sections 25601, 25602, 25603, 25604, 25606 and 25607, et seq. of this article.
Environmental Exposures

• From § 25600.1 Definitions
  – (f) “Environmental exposure” means an exposure that occurs as a result of contact with an environmental medium, including but not limited to ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, through inhalation, ingestion, or skin or other contact with the body. All exposures that are not consumer product exposures or occupational exposures are environmental exposures.

• § 25604 Environmental Exposure Warnings – Methods of Transmission
  1. For indoor environments or outdoor spaces with clearly identified entrances, a warning sign in no smaller than 72-point type, in English and other language used on signage in the affected area
  2. A warning provided in a notice mailed, sent electronically or otherwise delivered to each occupant in the affected area
  3. A warning published in the main or local news section of a newspaper with the largest circulation in the area for which the warning is given, at least every three months.
§ 25607 Specific Product and Area Exposure Warnings

- The new regulations provide for specific guidance for warning methods for:
  - § 25607.1/2 Food Exposure Warnings
  - § 25607.3/4 Alcoholic Beverage Warnings
  - § 25607.5/6 Food and Non-alcoholic Beverage Warnings for Restaurants
  - § 25607.7/8/9 Prescription Drug Exposure and Emergency Medical or Dental Care Exposure Warnings
  - § 25607.10/11 Raw Wood Exposure Warnings
  - § 25607.12/13 Furniture Product Exposure Warnings
  - § 25607.14/15 Diesel Engine Exposure Warnings
  - § 25607.16/17 Vehicle Exposure Warnings
§ 25607 Specific Product and Area Exposure Warnings

• The new regulations provide for specific guidance for warning methods for:
  – § 25607.18/19 Recreational Vessel Exposure Warnings
  – § 25607.20/21 Enclosed Parking Exposure Warnings
  – § 25607.22/23 Amusement Park Exposure Warnings
  – § 25607.24/25 Petroleum Product Exposure Warnings
  – § 25607.26/27 Service Station and Vehicle Repair Facilities Warnings (Environmental Exposures), AND (last, but not least)
  – § 25607.28/29 Designated Smoking Area Exposure Warnings (Environmental Exposures)
§ 25607.24/25 Petroleum Product Warnings (Environmental Exposures)

• (a) A warning for environmental exposures to petroleum products from industrial operations and facilities, other than service stations and vehicle repair facilities, meets the requirements in 25607.25 and is provided for using one or more of the methods required in 25604

**WARNING** Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals such as toluene and benzene that are known to the State of California to cause cancer and birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations such as pipelines, marine terminals, tank trucks and other facilities and equipment. For more information go to:  
[www.P65Warnings.ca.gov/petroleum](http://www.P65Warnings.ca.gov/petroleum)
ILMA submitted comments to EPA, along with the American Chemistry Council, July 2016.

Primarily responsive to Section 7 of the document, which were identified as data gaps.

EPA/OECD is currently taking information submitted and creating second draft.

ILMA will review and determine if additional comments should be submitted.