

2016 Management Forum

Safety, Health, Environmental &
Regulatory Affairs Committee Meeting

April 14, 2016

11:30AM-1:30PM

ILMA 2016 Management Forum SHERA Committee

California Prop 65/Section 5194 Update

John K. Howell, Ph.D., GHS Resources
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CA Title 8, Sec. 5194, Hazard Communication

- As a “State Plan State,” CalOSHA adopted a version of HCS 2012 retaining some elements of HCS 1994 and some CA-specific elements, 5/6/13
- State Plan State plans are subject to review by OSHA. Per a 2/5/16 call with Maureen Ruskin, she advised:
 - CalOSHA sent OSHA their revised plan, but OSHA has not done an “official” review
 - OSHA has informally reviewed plan and has advised CA OSHA that “we are comfortable” with plan. CalOSHA, per Maureen, “is comfortable that we are comfortable.”
 - OSHA will, ultimately, do formal review but no timetable is established
- url: <https://www.dir.ca.gov/title8/5194.html>

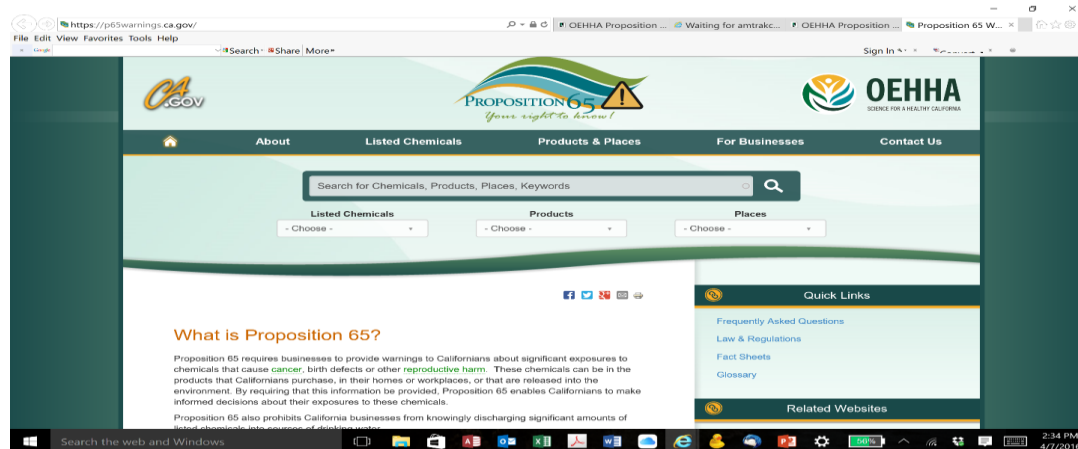
CA Title 8, Sec. 5194, Hazard Communication

Key differences between CA Title 8, Sec. 5194 and HCS 2012:

- Prop. 65 chemicals included/potentially included in products must be advised
- In addition to HCS 2012 classification based on Appendices A and B, other chemicals must be notified if:
 - There is statistically significant evidence of a hazardous effect, and
 - Evidence is based on at least one positive study conducted in accordance with established scientific principles, or it is listed in:
 - CA Title 8, Sec. 339, Hazardous Substances
 - OSHA 29 CFR 1910, subpart Z (PEL)
 - ACGIH Threshold Limit Value (TLV)
 - Carcinogens: NTP, IARC, CA Title 8, Sec 110, Regulated Carcinogens
- In CA, manufacturers are required to list any hazardous chemical on SDS if it is present at a concentration of 1% or more (2% if impurity) and the chemical in the mixture is **below** the cut-off concentration

CA Prop 65: “Clear and Reasonable Warnings”

- OEHHA proposal 11/27/15
 - ILMA comments submitted 01/22/16;
CalChamber, 01/25/16
- Lead agency website “live” 04/01/16
(<https://p65warnings.ca.gov/>)



CA Prop 65: “Clear and Reasonable Warnings”

- Further revised proposal 03/25/16:
http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/Mod_Article6NPR032516.html
- Comment due date extended to 04/28/16: it is expected that both CalChamber and ILMA will submit further comments
- Further issues include:
 - Is the ambiguity regarding Sec. 25601(c), Safe Harbor Methods and Content, including name of at least one chemical for each endpoint (cancer, reproductive toxicity) resolved?
 - Is Sec. 25606, Occupational Exposure Warnings clear enough?

CA Prop 65: “Clear and Reasonable Warnings”

- Sec. 25601(c):

(a) Except as provided in Section 25603(c), a warning meets the requirements of this article if the name of one or more of the listed chemicals for which the warning is being provided person has determined a warning is required is included in the text of the warning, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning. Where a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the warning.

CA Prop 65: “Clear and Reasonable Warnings”

- Sec. 25606:

(a) A warning to an exposed employee about ~~the chemical in question~~ 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.~~

- Note that the effective date is two year after the rule is finally agreed.

CA Prop 65: “Clear and Reasonable Warnings”

§ 25607.25 Petroleum Products Warnings (Environmental Exposures) – Content

(a) A warning for environmental exposures to petroleum products from industrial operations and facilities, other than from service stations and vehicle repair facilities, meets the requirements of this article if it is provided using the methods required in Section 25607.24, and includes all the following elements:

(1)The symbol described in Section 25603(a)(1).

The word “WARNING” in all capital letters and bold print.

(1)The words, “Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals such as toluene and benzene ~~that~~ which 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:

CA Prop 65: Added Chemicals

- Ethylene glycol, CAS 107-21-1, effective date, June 19, 2016
 - 04/08/16 notice proposing Maximum Allowable Dose Level (MADL for reproductive toxicants) of 8,700 micrograms/day via oral route; comments by 05/23/16. Difficult to envision safe harbor exposure scenario below this level.
- n-hexane, **nickel and nickel salts**, perfluorooctanoic acid and its salts and perfluorooctanesulfate and its salts are being studied by the Developmental and Reproductive Toxicant Identification Committee (DARTIC) of OEHHA's Science Advisory Board for possible inclusion in the Prop 65 list as reproductive toxins. Data call-in was due April 4th

Toxic Substances Control Act Reform Status

Senate and House Bills

- The Frank Lautenberg Chemical Safety for the 21st Century Act (S. 697) passed the Senate by unanimous voice vote in December 2015.
- The TSCA Modernization Act of 2015 (H.R. 2576) passed the House of Representatives in June 2015.
- There are fairly significant differences between the two bills currently dealing with issues such as state preemption, prioritization screening for chemicals and CBI claims that must be reconciled by conference committee.

TSCA Reform

- Both the House and Senate are continuing to work towards a resolution and key players in the negotiations such as Representative John Shimkus (R-IL) and Senate EPW Committee Chairman Jim Inhofe (R-OK) remain optimistic for a resolution this year.
- However, both the House and Senate have relatively few work days prior to leaving for a seven-week recess in mid July.

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HCS 2012 Update

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Dates

- 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 must be HCS 2012 labeled

Use of NFPA and HMIS[®] Labeling Systems

- Use of NFPA and/or HMIS[®] labelling systems allowed but must include product identifier and to make sure that general information concerning all of the hazards of the chemical(s) can be conveyed
- The NFPA/HMIS[®] rating systems do not directly correlate with HCS classifications
- Must not cast doubt or contradict the validity of label information
- Level of employee awareness must equal or exceed if employee was provided complete health effects information

Import/Export

- Imports – duty to label begins when importer takes control
 - DOT label required while in transport
 - Follow .1200(b)(4) for sealed containers where applicable
 - Containers destined within the U.S. must be labeled in accordance with (f)(1)
 - Work with overseas manufacturer to produce HCS 2012-compliant label
- Exports – direct shipment to country of destination
 - Place in DOT or similar approved container
 - Label the sealed container for destination country
 - No HCS label required for intermediate container
 - 1200(f)(1) label on outside of container or attached to shipping papers
 - Shipping container labeled in accordance with DOT/IMO

Hazard Communication Violations

12/01/13 – 03/31/16 (Federal data)

- 13,657 total violations
 - Serious, 7629; Willful, 8; Repeat, 322; Other, 5698
- 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, DOT label takes precedence over HCS label
 - DOT labels contain symbols, thus considered a “pictogram” under HCS
 - For hazards where no DOT label required, HCS pictograms must appear

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REACH, Canada, Mexico Update

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REACH 2018

- All substances used at 1 tonne/year or more, whether substances or as part of a preparation, need to be registered with ECHA
- Registration deadline, substances, 1 – 10 tonnes/year, is 05/31/18
- Where we are:
 - 2.75 million pre-registrations for 146,000 substances
 - 43,972 registrations for 9,032 substances by end of 2015
 - Where are the remaining registrations? (some 20,000 substances)
- Help is available: <http://echa.europa.eu/reach-2018>
- Post-Management Forum conference call to review if interest is there

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!

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!

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CDR 2016 Update

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Who Needs to Report?

- Reporting period: June 1, 2016 – September 30, 2016
- Exemptions:
 - Small manufacturer exemption, under 40 CFR 740.3, applies except for chemicals subject to a rule proposed or promulgated under TSCA Sections 4, 5(b)(4) or 6 or for which an order has been issued under Section 5(e)
- Who is a small manufacturer?
 - You are a *small manufacturer or importer* if your total annual sales, combined with your parent company, if any, are less than \$40 million, except,
 - If annual production at any individual site owned or controlled is greater than 100,000 lbs, then you are “small” only if your annual sales, combined with your parent company, if any, are less than \$4,000,000

Examples of What Might Be Reported

- Grease manufacturers:
 - *In situ* thickeners, such as lithium 12-hydroxystearate or calcium stearate
- Metalworking fluid manufacturers:
 - *In situ* emulsifiers, such as potassium salt of tall oil fatty acids
 - *In situ* corrosion inhibitors, such as nitric acid, reaction products with cyclodecanol and cyclodecanone, by-products from, high boiling fraction, compounds with triethanolamine
- Everyone:
 - Chemicals directly imported in quantities of 25,000 lbs or more

<https://www.epa.gov/chemical-data-reporting/how-report-under-chemical-data-reporting#schemas>

ILMA/UEIL Partnership

ILMA/UEIL

- On March 30th, ILMA and UEIL had a conference call to discuss previous salt testing done by ILMA and UEIL and future opportunities for collaboration.
- As a result of the discussion, both Associations intend to participate more actively in the other's meetings and the new ILMA website "communities" should allow for easier communication and interaction.