

## Four recently posted OSHA letters of interpretation on the Hazard Communication Standard, 29 CFR 1910.1200

[07/20/2016] - Container labeling requirements for importer under HCS 2012 [1910.1200; 1910.1200(c); 1910.1200(f)(1)]

[06/20/2016] - Responsible party's address and phone number on SDSs and labels [1910.1200(c)]

[06/10/2016] - Requirements for labeling of products shipped for export to domestic and international destinations, under the revised Hazard Communication Standard (HCS 2012) [1910.1200(f)(1)(i); 1910.1200(f)(1)(ii); 1910.1200(f)(1)(iii); 1910.1200(f)(1)(iv); 1910.1200(f)(1)(v); 1910.1200(f)(1)(vi)]

[05/20/2016] - By-product hazard information included in safety data sheet, Section 2 [1910.1200; 1910.1200(g)(2)]

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July 20, 2016

Mr. Stuart Chundrlek  
ThreeBond International Inc.  
6184 Schumacher Park Drive  
West Chester, Ohio 45069

Dear Mr. Chundrlek:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. Your letter requested verification of your responsibility for container labeling as required by the Hazard Communication Standard (HCS 2012), 29 CFR 1910.1200. This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your highlighted interpretations have been paraphrased below, followed by our responses.

**Scenario:** ThreeBond International Inc. receives unlabeled tubes from Japan packed 20 to a box with a hazard communication label only on the master pack. Safety data sheets are made available from the manufacturer and the outer container has all of the information on the materials inside of the tubes.

**Question:** Do we need hazard communication labels on the tubes of unlabeled adhesive received from overseas manufacturers? If the unlabeled container (i.e., tubes) has not left the premises of the importer, can the material continue to be warehoused in an unlabeled state?

**Response:** Under the HCS, the immediate container of a hazardous chemical must be labeled. See 29 CFR 1910.1200(c), (f)(1). An importer's responsibility to assure appropriate labels are on incoming containers of hazardous chemicals (i.e., labels are HCS 2012-compliant) begins when the importer takes control of the containers of hazardous chemical. Prior to shipping imported containers of hazardous chemicals to destinations within the United States, the importer must assure that each container is appropriately HCS 2012 labeled (i.e., in accordance with 29 CFR 1910.1200(f)(1)). The importer should work with the (overseas) manufacturer to produce a U.S. compliant HCS 2012 label.

Paragraph 29 CFR 1910.1200(b)(4) applies to work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (e.g., marine cargo handling, warehousing, or retail sales). For these operations, if the unlabeled tubes are kept in the HCS 2012 labeled sealed container (master pack) while in the warehouse, there is no requirement to affix an HCS 2012 to each individual tube. However, once the sealed container is opened while in the warehouse, then an HCS 2012-compliant label must be affixed to each individual tube in accordance with paragraph (f)(1), or proper workplace labels must be affixed in accordance with paragraph (f)(6).

**Question:** Prior to leaving the importer's premises for delivery to other warehouses, or the final customer, must the product be labeled in accordance with OSHA's HCS 2012 or other applicable standard such as by the Consumer Product Safety Commission (CPSC)?

**Response:** Yes. Prior to shipping imported containers of hazardous chemicals to destinations within the U.S., the importer must assure that each container is appropriately HCS 2012 labeled, in accordance with 29 CFR 1910.1200(f)(1). OSHA exempts products from HCS labeling when they are subject to a consumer product safety standard or labeling requirements of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See 29 CFR 1910.1200(b)(5)(v). The Consumer Product Safety Act defines a consumer product as "any article, or component thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise..." 15 U.S.C. §2052(a)(5).

**Question:** If an importer knows that at least one downstream user considers the product a consumer product, is it reasonable for the importer to treat the whole set of tubes as a consumer product? Does the size of the container determine whether a chemical is a consumer product?

**Response:** It is the responsibility of the manufacturer or importer of a particular chemical to make the determination whether it meets the CPSC's definition of a consumer product. We suggest you contact the CPSC for questions related to their requirements. The CPSC can be reached at:

U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Phone: (301) 504-7923  
Fax: (301) 504-0124 and (301) 504-0025

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA's requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To ensure that you are using the correct information and guidance, please consult OSHA's website at <http://www.osha.gov>. If you have further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

Thomas Galassi, Director  
Directorate of Enforcement Programs

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June 20, 2016

Mr. James Lee  
3E Company  
4520 East West Highway, Ste. 440  
Bethesda, Maryland 20814

Dear Mr. Lee:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. You requested confirmation regarding the responsible party's address and phone number on safety data sheets (SDS) and labels under OSHA's Hazard Communication Standard 2012 (HCS 2012). This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your paraphrased question and our response are below.

**Question:** When chemicals are imported into the United States, must the responsible party include a U.S. address and U.S. phone number on the SDS and label?

**Response:** Yes, a U.S. address and U.S. phone number are required on SDSs and labels for hazardous chemicals. The standard defines "importer" as "the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States." 29 CFR 1910.1200(c). As OSHA explained in a letter of interpretation to [Mr. Michael J. Kelleher](#), dated January 19, 2000 (copy enclosed), an importer is the "responsible party" for purposes of complying with the HCS. The HCS defines "*responsible party*" as "someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary." 29 CFR 1910.1200(c).

As explained in the HCS 2012 compliance directive, [CPL 02-02-079](#),<sup>1</sup> the importer, being the first point of contact within the United States, is responsible for the SDS and labeling information on the products being imported to the United States. This information must include the importer's name, U.S. address, and U.S. telephone number. It is preferable that the original foreign manufacturer's name and address be removed from the label to prevent confusion, but it is not required.

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Sincerely,

Thomas Galassi, Director  
Directorate of Enforcement Programs

Enclosure

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<sup>1</sup> CPL 02-02-079, *Inspection Procedures for the Hazard Communication Standard (HCS 2012)*, [https://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-02-079.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-02-079.pdf)

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June 10, 2016

Mr. Wade C. Wollermann, P.E.  
Endpoint Solutions  
6871 South Lover's Lane  
Franklin, Wisconsin 53132

Dear Mr. Wollermann:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. You requested clarification on the requirements of OSHA's Hazard Communication Standard (HCS 2012), 29 CFR 1910.1200, for conforming with the United Nations' (UN's) Globally Harmonized System of Classification and Labelling of Chemicals (GHS), as it applies to products manufactured for shipment to domestic or international destinations. This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your paraphrased scenarios and questions are presented below, followed by our responses.

**Background:** You have stated that Endpoint Solutions represents a client that manufactures and distributes various chemicals that are packaged in individual containers of various sizes, and distributed in various shipping containers to downstream distributors and customers. It is clear to you and your client that shipments to domestic locations must comply with the requirements of HCS 2012, as well as the U.S. Department of Transportation (DOT), and shipments to international destinations should comply with the requirements in effect at the shipping destination. However, your client's customers have expressed a desire to see the labeling customized to their need. Specifically, you provided five labeling scenarios and a total of eleven questions combined.

Although your letter refers to "GHS-compliant" labels, to clarify, in the U.S., the Hazard Communication Standard (HCS) was aligned with the GHS in 2012 and is the implementing regulation. Therefore, OSHA's responses refer to the requirements under HCS 2012.

**Scenario 1:** Labeling requirements for individually packaged hazardous (GHS & DOT) substances: A manufacturer containerizes and ships individually packaged quantities (e.g., pints, gallons, drums) of hazardous chemicals. These containers are prepared for transportation to a number of different domestic and international destinations.

**Question 1:** Is the manufacturer required to label individual containers with GHS-compliant labels regardless of the final destination of the container?

**Response:** OSHA's Hazard Communication Standard requires manufacturers, importers and distributors to ensure that each shipped container leaving the workplace be labeled, tagged, or marked in accordance with paragraphs 1910.1200(f)(1)(i)-(vi).

OSHA recognizes that some containers may be shipped to destinations outside of the U.S., sealed inside a shipping container and sent directly overseas with no anticipated exposures to workers downstream (i.e., U.S. warehouse and dock workers) during normal conditions of handling. In these situations, when sealed containers of hazardous chemicals are prepared for direct shipment to a destination outside of the U.S., and are placed inside of a U.S. Department of Transportation (DOT) or other similarly-approved shipping container, the manufacturer may label the sealed product containers for the destination country, rather than with an HCS 2012 label.

However, as OSHA explained in its [November 23, 2015, letter](#) to Mr. Stephen Wieroniey (copy enclosed), an HCS 2012 label compliant with paragraph 1910.1200(f)(1) must be on the outside of the shipping container or attached to any accompanying shipping papers or bill of lading. This accommodation will provide basic information to downstream workers, such as warehouse or dock workers who may be exposed in case of a spill or release or other emergency. The shipping container should also be labeled in accordance with DOT and/or International Maritime Organization (IMO) labeling regulations or requirements during shipping.

**Scenario 2: Labeling requirements for individually packaged hazardous (GHS & DOT) substances while work is "in process" (i.e., where containers are grouped and packaged awaiting blending):** In some cases, individual containers are grouped and packaged together within a larger outer container tray or wrapping while inside the manufacturer's facility prior to shipping.

**Question 2:** Must the manufacturer label individual containers that are "in process?"

**Response:** Yes. All containers of hazardous chemicals in the manufacturer's facility must be labeled in accordance with paragraphs 1910.1200(f)(6), (f)(7), or (f)(8), as appropriate.

**Scenario 3: Labeling requirements for individually packaged hazardous (GHS & DOT) substances containerized in additional outer packaging for transportation:** In some cases, individual containers are grouped and packaged together in a larger outer container or wrapping and the outer packaging is permanently sealed for transportation to the final destination.

**Question 3:** What are the labeling requirements, regardless of destination, for chemicals manufactured and packaged into individual containers and subsequently placed into an **outer** shipping container?

**Response:** If the chemicals are destined for distribution within the U.S., then each individual container must be labeled in accordance with paragraph 1910.1200(f)(1). For chemicals intended for direct shipment to another country, please see response to question 1. In addition, if sealed containers of hazardous chemicals are prepared for direct shipment to a destination outside of the U.S., but are temporarily stored at a manufacturer's on-site warehouse, the manufacturer may label the sealed individual containers for the destination country, rather than with an HCS 2012 label. However, as explained in the [November 23, 2015 Wieroniew letter](#), the manufacturer must label the external packaging (i.e., shipping container) at minimum with workplace (in-house) labeling, in accordance with paragraph 1910.1200(f)(6), while the containers remain at the warehouse. Prior to shipping the containers from the on-site warehouse, an HCS 2012 label, compliant with paragraph 1910.1200(f)(1), is required on the outside of the shipping container or attached to any accompanying shipping papers or bill of lading. And, the shipping container should be labeled in accordance with DOT and/or IMO labeling regulations or requirements during shipping.

**Question 4:** Is the manufacturer allowed to ship chemicals packaged into individual containers that are not HCS 2012 compliant to a domestic destination, as outlined in OSHA's June 4, 2013, letter of interpretation to the National Institute of Standards and Technology (NIST)?

**Response:** No. All individual containers packaged for shipment inside of the U.S. must be HCS 2012-compliant, in accordance with paragraph 1910.1200(f)(1). The small packaging accommodation outlined in the NIST letter is applicable only when the immediate containers are too small to hold the full HCS 2012 label information.

**Question 5:** Can the manufacturer ship chemicals packaged in individual containers that are not GHS compliant, and are packaged in an outer container that is also not GHS compliant, to a domestic destination with the understanding that the package will be forwarded unopened directly to an international destination?

**Response:** No, see the response to question 1.

**Question 6:** Can the manufacturer ship chemicals packaged in individual containers that are not GHS compliant, and are packaged in an outer container that is also not GHS compliant directly to an international destination?

**Response:** No, see the response to question 1.

**Scenario 4: Labeling requirements for bulk packaged hazardous (GHS & DOT) substance, packaged for distribution to clients for domestic and international distribution:** In addition to individual packaging, the manufacturer exports bulk containers (up to hundreds of pounds or gallons) of hazardous solids or liquids. Unlike individual containers with outer packaging, there is no secondary packaging of bulk containers. Appendix C of HCS 2012 does not prohibit additional information on a GHS-compliant label, and OSHA has further clarified that additional supplemental information is permitted if it does not cast doubt on the HCS-required information in OSHA's January 31, 2013 letter of interpretation addressed to Ms. Erin McVeigh.

**Question 7:** Would affixing a destination country's compliant label, as well as an HCS 2012-compliant label, be considered as casting doubt on the HCS label?

**Response:** If an internationally GHS-compliant label is included on the immediate container along with the HCS 2012-compliant label information, there must be no conflict/contradiction between the two labels. Although OSHA does not anticipate that an internationally GHS-compliant label would cast doubt on the HCS label, contradictions may arise if another country has adopted a different version of the GHS than the U.S.

**Question 8:** Does OSHA have any guidance or comment on maintaining GHS compliance while additionally affixing labels for destination countries?

**Response:** See the response to question 7.

**Scenario 5: Labeling requirements for packaged hazardous substances imported from an international source:** The manufacturer imports containers of hazardous materials from international destinations, which are either directly delivered to the customers' locations, or directly to the manufacturer for further processing. Before arriving at the

final destination, the transport container holding smaller containers of hazardous materials make several stops during the import process, for example, seaside shipping ports, customs, and freight forwarder areas.

**Question 9:** When must the chemical containers be affixed with the HCS 2012-compliant labels and when must compliant safety data sheets (SDSs) be generated?

**Response:** The responsibility of manufacturers or importers to assure appropriate labels are affixed to containers of hazardous chemicals (i.e., labels are HCS 2012 compliant), as well as to provide the appropriate SDS, begins when they take control of the containers of hazardous chemicals. Importers and cargo handlers must follow the requirements of 29 CFR 1910.1200(b)(4) where applicable. Prior to shipping imported containers of hazardous chemicals to destinations within the U.S., the manufacturer or importer must assure that each container is appropriately HCS 2012 labeled, in accordance with 29 CFR 1910.1200(f)(1). One way an importer can accomplish this is to work with the (overseas) manufacturer to produce an HCS 2012-compliant label and SDS.

**Question 10:** How long does an importer have, from the time the containers are received, to affix the HCS 2012-compliant labels?

**Response:** After importers take control of the containers, they must label the hazardous containers with at least workplace labeling in accordance with 1910.1200(f)(6); prior to shipping, importers must label hazardous chemicals in accordance with 1910.1200(f)(1).

**Question 11:** Regardless of when the HCS 2012-compliant labels must be affixed, who is responsible for generating the labels and SDSs?

**Response:** The manufacturer or importer is responsible for ensuring that the containers are properly labeled and the appropriate SDSs are HCS 2012-compliant. As stated earlier, the manufacturer or importer can work with the overseas manufacturer to produce HCS 2012-compliant SDSs.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To assure that you are using the correct information and guidance, please consult OSHA's website at <https://www.osha.gov>. If you have any further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

Thomas Galassi, Director  
Directorate of Enforcement Programs

Enclosure

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May 20, 2016

Ms. Nicole Shoshenskiy  
Authoring Services Team Lead  
MSDSonline  
350 N. Orleans St., Suite 950  
Chicago, Illinois 60654

Dear Ms. Shoshenskiy:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. Your letter requested clarification on the hazard information that must be included in the safety data sheet

(SDS) as required by the Hazard Communication Standard (HCS 2012), 29 CFR 1910.1200. This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your questions have been paraphrased below, followed by our responses.

**Background:** The HCS 2012 compliance directive, CPL 02-02-079,<sup>1</sup> includes guidance for by-products that are covered under the HCS. It provides that "a manufacturer's or importer's hazard determination or hazard classification must anticipate the full range of downstream uses of their products and account for any hazardous by-products which may be formed."

**Question 1:** Are chemical by-products required to be included in SDS Section 2, in Hazards Not Otherwise Classified (HNOC), or merely as warning language throughout the SDS? Should information on by-products be included in SDS Section 3?

**Response:** A manufacturer's or importer's hazard classification must account for the hazards of by-products, including HNOCs. This information must be included in SDS Section 2, as well as in SDS Section 10 (*Stability and reactivity*). If a by-product poses an HNOC, that information must be included in SDS Section 2(c) (which requires information on HNOCs). A manufacturer's or importer's hazard determination or hazard classification must anticipate the full range of downstream uses of their products and account for any hazardous by-products which may be formed. There is no requirement to include chemical by-product(s) information in SDS Section 3 (*Composition/information on ingredients*).

**Question 2:** Do manufacturers have the obligation to track down their products to all downstream users in the supply chain to obtain information on the uses of their products that may form hazardous by-products?

**Response:** Manufacturers and importers covered by the HCS 2012 must make a reasonable effort to obtain reliable information to determine how their product(s) or by-product(s) may expose workers under normal conditions of use or in foreseeable emergencies. A manufacturer's or importer's hazard classification must anticipate the full range of downstream uses of its products and account for any hazardous by-products that are known to be present and may be formed. However, there is no requirement that each and every downstream work environment be contacted to obtain the hazard information.

**Question 3:** Is polymerization considered an HNOC because of the chemical reaction, or because of the quantity of heat that is released?

**Response:** Polymerization of monomers is a chemical reaction that is often exothermic (evolves heat). Loss of control of polymerization reactions can result in fires, explosions, or toxic releases. Polymerization is considered an HNOC because of these hazards.

**Question 4:** What are the criteria for determining if something is or is not an HNOC?

**Response:** CPL 02-02-079 clarifies that an HNOC means an adverse physical or health effect identified through evaluation of scientific evidence during the classification process that does not meet the specified criteria for the physical and health hazard classes addressed in the standard. OSHA's definition for HNOC ensures that hazards previously covered under HCS 1994 remain covered under HCS 2012 by including hazards that currently fall outside the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS) hazard classes. It is OSHA's intent that the HNOC classification would be an interim measure, used until harmonized criteria for a hazard can be adopted at the UN Sub-committee level, and subsequently incorporated into the HCS through rulemaking.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA's requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To ensure that you are using the correct information and guidance, please consult OSHA's website at <https://www.osha.gov>. If you have further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

Thomas Galassi, Director  
Directorate of Enforcement Programs

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1. CPL 02-02-079, *Inspection Procedures for the Hazard Communication Standard (HCS 2012)*,  
[/OshDoc/Directive\\_pdf/CPL\\_02-02-079.pdf](#).