

SCHC 2023 Annual Fall Meeting
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OSHA's Hazard Communication Standard (HCS) Enforcement Update

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Objectives

- Highlights of OSHA's HCS Letters of Interpretation
- Enforcement data (federal only)
- OSHA Initiatives:
 - Silica Engineered Stone Initiative
 - Warehousing National Emphasis Program (NEP)
 - Heat NEP

Question: Does OSHA have guidance on acceptable methods to transmit labels by "technological or other means" for bulk shipments of hazardous chemicals?

- Electronic transmission of product labels for bulk shipments may be conveyed through various electronic platforms as long as:
 - **The product label is immediately available to workers in printed form on the receiving end of a shipment, and**
 - In the event of emergencies for provision to medical and emergency personnel.
- Downstream users “opt-in” to accept electronic transmission of product labels for bulk shipments. They may “opt-out” at any time.
 - See Section X.G.p. of [CPL 02-02-079](#) for information on manufacturer, importer, and distributor responsibilities related to electronic transmittal of SDSs.
- <https://www.osha.gov/laws-regs/standardinterpretations/2022-11-09>

Question: Could we provide the label electronically when we provide the SDS prior to the first bulk shipment? If so, would we need to re-send the label prior to each shipment, or only if there are changes to the label?

- If the recipient "opts-in" to have HCS-compliant labels provided to them by electronic transmission, **the label must be still be provided at the time of each bulk shipment.**
- The only exception for bulk shipments would be under 29 CFR § 1910.1200(f)(4), Solid Materials, such as wood, steel, plastic items, or whole grain, where the label is required on the first shipment only and need not be included in subsequent shipments to the same employer unless the label information changes.
- <https://www.osha.gov/laws-regs/standardinterpretations/2022-11-09>

Applicability of the HCS to Lithium-Ion Batteries – Dec. 2022

- **Hazard Classification:**

- Manufacturers' and importer's responsibility
- Appendices A&B
- May use available information from voluntary industry standards, UN testing regimes, or other generally accepted tests, provided that the information relied upon be "scientifically validated."
- Consider emergency exposures
- Not expected to include an evaluation of another manufacturer's design criteria in which the battery is used

- **Article Determination:**

- Manufacturers' and importers' responsibility
- End-use products that contain an integrated, non-user-accessible Li-ion battery or battery pack that meet the definition of an "article" would be exempt from the HCS as an article under 29 § CFR 1910.1200(b)(6)(v). (SDS and training for employee exposure)

Applicability of the HCS to Lithium-Ion Batteries – Dec. 2022 *cont.*

- **Labeling Requirements:**

- Generally, an integrated, non-user-accessible Li-ion battery/battery pack contained in an end-use product (*e.g.*, point-of-sale computer terminal, handheld device) would likely be a consumer product⁶ and subject to CPSC labeling requirements rather than HCS requirements.
- Practicable accommodation for small batteries, if not exempt consumer products
- If the palletized or USDOT-compliant package is the immediate container is it considered the container subject to HCS labeling requirements

- **Attachment 1** to the letter provides several scenarios to give a clearer understanding of the application of the HCS to Li-ion batteries.

- <https://www.osha.gov/laws-regs/standardinterpretations/2022-12-01>

Previous Letters on HCS Coverage of Lithium-ion Batteries

- LOI Issued - December 2015 - <https://www.osha.gov/laws-regs/standardinterpretations/2015-12-15>
 - Primary responsibility for chemical hazard classification is on the manufacturer or importer of the material or substance and must take into consideration the downstream uses and potential exposures to workers.
 - Lithium-ion batteries have the potential to leak, spill, or and expose employees to physical hazard or health risk and therefore, cannot be considered an article.
 - Products which contain lithium-ion batteries that are not consumer products must be properly labeled and develop/make available SDS.
- LOI Issued – June 2021 - <https://www.osha.gov/laws-regs/standardinterpretations/2021-06-23>
 - European Portable Battery Association and representatives requested a risk assessment and scientific justification.

Top 10 Most Frequently Cited Standards

Fiscal Year 2022 (Oct. 1, 2021, to Sept. 30, 2022)

1. Fall Protection, construction
2. **Hazard Communication, general industry**
3. Ladders, construction
4. Respiratory Protection, general industry
5. Scaffolding, general requirements, construction
6. Control of Hazardous Energy (lockout/tagout), general industry
7. Powered Industrial Trucks, general industry
8. Fall Protection–Training Requirements, construction
9. Eye and Face Protection, construction
10. Machinery and Machine Guarding, general requirements

Top HCS Violations Cited

(federal data)

FY21 Top 5 Most Frequently Cited Hazard Communication Standards	
1) 1910.1200(e)(1)	519
2) 1910.1200(h)(1)	435
3) 1910.1200(g)(8)	168
4) 1910.1200(g)(1)	116
5) 1910.1200(f)(6)(ii)	105

FY22 Top 5 Most Frequently Cited Hazard Communication Standards	
1) 1910.1200(e)(1)	584
2) 1910.1200(h)(1)	693
3) 1910.1200(g)(8)	281
4) 1910.1200(g)(1)	197
5) 1910.1200(e)(1)(i)	175

OSHA Initiatives

- Silica Focused Inspection Initiative in the Engineered Stone Industries
- National Emphasis Program (NEP) on Warehousing and Distribution Center Operations
- NEP – Outdoor and Indoor Heat-Related Hazards

Silica Engineered Stone Initiative

- **Inspections will be conducted at establishments within NAICS codes:**
 - **327991** - Cut Stone and Stone Product Manufacturing
 - **423320** - Brick, Stone, and Related Construction Material Merchant Wholesalers
- **Scope & Goal** – Federal OSHA **Regions 1 through 8**, complete a *minimum* of **five (5) programmed inspections** within 12 months.
- **Outreach** - Ensure employers are provided with the OSHA and NIOSH [Hazard Alert](#).
- Employers must include respirable crystalline silica in their hazard communication program. In addition to training, workers must have access to labels on silica containers and safety data sheets (SDSs).
- [September 22, 2023](#) Memorandum

The National Emphasis Program (NEP) on Warehousing and Distribution Center Operations

- [CPL 03-00-026](#), Effective Date: July 13, 2023, operative for 3 years
- Common hazards in the targeted industries include:
 - powered industrial vehicle operations
 - material handling/storage
 - walking-working surfaces
 - means of egress
 - fire protection
 - heat
 - ergonomic hazards
 - chemical hazards/hazard communication
- [Hazard Communication Temporary Worker Initiative Bulletin](#)

NAICS Codes Targeted by This NEP

Table 2: Covered Industries

NAICS CODES	ESTABLISHMENTS
491110	Postal Service (Processing and Distribution Centers only)
492110	Couriers and Express Delivery Services
492210	Local Messengers and Local Delivery
493110	General Warehousing and Storage
493120	Refrigerated Warehousing and Storage
493130	Farm Product Warehousing and Storage
493190	Other Warehousing and Storage

Table 3: High Injury Rate Retail Establishments

NAICS CODES	HIGH INJURY RATE RETAIL ESTABLISHMENTS
444110	Home Centers
444130	Hardware Stores
444190	Other Building Material Dealers
445110	Supermarkets and other grocery stores
452311	Warehouse Clubs and Supercenters

Top 10 Standards Cited

Standards	Description	# of Inspections
1910.37(a)(3)	Exit routes must be free and unobstructed	214
OSH Act of 1970 Section (5)(a)(1)	General Duty Clause (i.e., damaged racking systems, not using seatbelts while operating PIVs, heat, ergonomics)	187
1910.178(l)(1)(i)	Training and evaluation	160
1910.178(l)(6)	Certification	136
1910.1200(e)(1)	Develop, implement, and maintain at each workplace, a written hazard communication program	131
1910.1200(h)(1)	Training on hazardous chemicals	130
1910.178(l)(4)(iii)	Evaluation of each PIV operator's performance at least once every three years	115
1910.151(c)	Eyewash facilities	113
1910.176(b)	Secure Storage	111
1904.39(a)(2)	Reporting requirements	110

National Emphasis Program – Outdoor and Indoor Heat-Related Hazards

- [CPL 03-00-024](#), Effective Date: April 8, 2022, operative for 3 years
- As of 9/25/23, 3,980 total Heat NEP Federal inspections since 4/8/22
 - Industry percentage of the 3,980 Inspections:
 - 49% construction
 - 14% manufacturing
 - 1% maritime
 - 36% other NAICS (other NAICS include all industries that do not include construction, manufacturing or maritime such as agriculture, transportation, warehousing, food services, waste management, and remediation services)
 - 24 General Duty Clause violations
 - 500 Hazard Alert Letters

Resources

- [29 CFR 1910.1200 Hazard Communication](#)
- [OSHA Hazard Communication Safety and Health Topics Page](#)
- [OSHA – NIOSH Hazard Alert: Worker Exposure to Silica during Countertop Manufacturing, Finishing and Installation](#)
- [OSHA Warehousing Safety and Health Topics Page](#)
- [Heat: Extreme Heat Can Be Deadly to Workers Hazard Alert](#)

Questions?

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