

Hazard Communication

An Enforcement Update



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OSHA, Office of Health Enforcement
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Highlighted Issues

- “New” Interpretations
- Revisit:
 - Use of concentration ranges
 - DOT/OSHA bulk shipment guidance
 - SDS Section 3 and 8
- Enforcement stats
 - Top 10
 - Most Frequently Cited
- Safe + Sound – “The Challenge”



SAFE + SOUND 

Section 25(b) – “minimum risk pesticides” – HCS label requirements

- Certain Section 25(b) "minimum risk pesticides"
 - E.g., citric acid, corn gluten, garlic, mint oil.
- Minimum risk pesticides meet the definition of pesticide and are subject to EPA’s labeling requirements.
 - No HCS label required.
- Spray adjuvants and commercial fertilizer products
 - E.g., surfactants, spreader stickers, crop oils, anti-foaming materials.
 - EPA label may or may not be required.
- Requirement to still have available a safety data sheet.

“Universal waste” under HCS

- HCS does not apply to hazardous wastes regulated by the U.S. Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA) - 29 CFR 1910.1200(b)(6)(i),
- When waste does not meet the definition of "hazardous waste" under the RCRA regulations:
 - Covered by the HCS if it meets the standard's definition of "hazardous chemical" at 29 CFR 1910.1200(c); and,
 - If it does not fall under any of the other HCS exemptions.
- Employer's burden to demonstrate a claimed exemption to the HCS.
 - i.e., employer must be able to demonstrate that the material is subject to RCRA regulations.

Use of Concentration Ranges



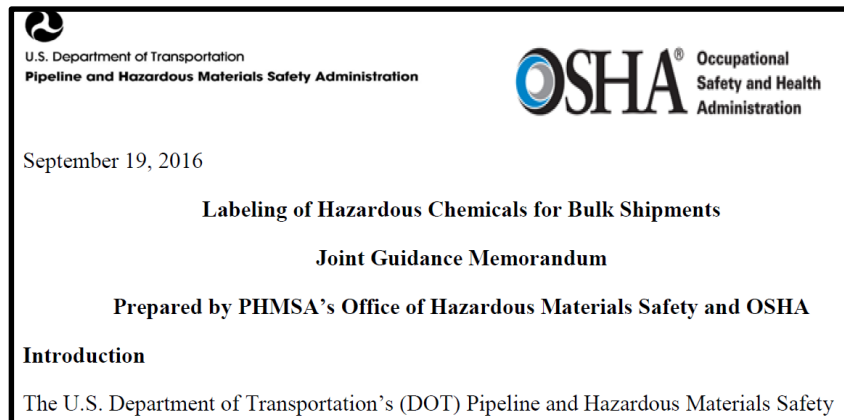
- A concentration range may be used when:
 - A trade secret claim has been made (for the exact percentage);
 - There is batch-to-batch variability in the production of a mixture; or for a group of substantially similar mixtures with similar chemical composition.
- Trade secret status may be claimed for exact percentage composition but not for concentration ranges.
- When classifier uses a range of concentrations:
 - must be sufficiently narrow to meet the intent of disclosing the actual concentration;
 - Accurate representation of the variation.
- The hazard classification must reflect the highest degree of hazard that the mixture could present.
- FAQ developed and posted - [Use of concentration ranges on SDSs FAQ](#)

Use of Concentration Ranges

Does the Mfg/Imp consider the specific chemical identity a trade secret?	Is the Mfg/Imp using an exact percentage or percentage range to identify the ingredient?	Can the percentage be claimed as a trade secret?	Trade secret indication
Yes	Exact percentage	Yes	SDS indicates the ingredient name and/or exact percentage is being withheld as a trade secret.
No	Exact percentage	Yes	SDS indicates the exact percentage is being withheld as a trade secret but <u>not</u> the ingredient name.
Yes	Percentage range	No	SDS indicates the ingredient name is being withheld as a trade secret but <u>not</u> the percentage range.
No	Percentage range	No	SDS may not indicate either the ingredient name or percentage range as a trade secret.

DOT/OSHA Bulk Shipment Guidance - Pictograms

- DOT/OSHA guidance applies only to bulk shipments of hazardous chemicals that are loaded into large primary containers (i.e., tanker trucks or rail car) that have no intermediate form of containment.
- OSHA has not adopted the DOT definition of bulk packaging as equivalent to HCS 2012 compliant bulk shipment as detailed in the guidance.



Section 3 and 8

- Follow up to poster presented by Mr. Ranmi Aduloju
- OSHA issued an LOI – 5/18/18 (and also previously to Ms. Erin McVeigh (2013))
- #4 - Above the cut-off value, contributes to the hazard classification, but doesn't have an OEL: must be included in sections 3 and 8 with a statement that the recommended OEL is "not applicable (N/A)" or "none". *OSHA agrees.*
- #5 - Below the cut-off value, contributes to the hazard classification, but doesn't have an OEL: must be included in sections 3 and 8 with the statement that the recommended OEL is "not applicable (N/A)" or "none". *OSHA agrees; please note that the ingredient must be included in section 3 if it is present below the cut-off value but presents a health risk.*
- #6 - Above the cut-off value, does not contribute to the hazard classification, and does not have an OEL: must be included in section 3 but not section 8. *OSHA disagrees; the ingredient must be included in section 8 with the statement that the recommended OEL is "not applicable (N/A)" or "none."*

Section 3 and 8 Clarification

- Clarification can be found in the September 2016 memo;
 - <https://www.osha.gov/laws-regs/standardinterpretations/2016-09-21>

- **Question 5:** What ingredients must be listed in sections 3 and 8 of the safety data sheet?

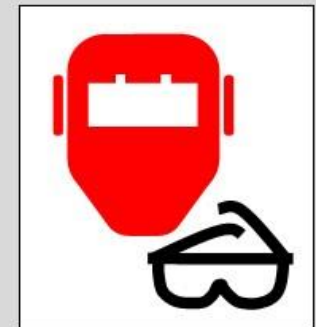
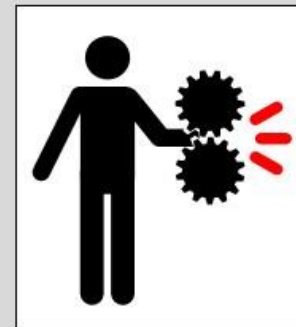
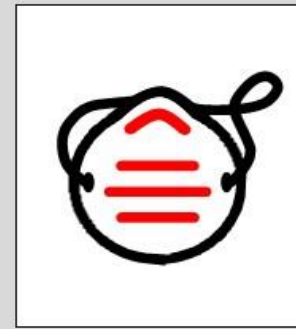
Response: CPL 02-02-079 currently states that "[t]he list of constituents in sections 3 and 8 must be the same." This statement has been clarified and is replaced with the following guidance:

If a chemical ingredient is listed in section 3 of the SDS, it only needs to be listed in section 8 if there is a PEL, TLV or other occupational exposure limit (OEL). However, if a chemical ingredient is listed in SDS section 8, then OSHA would expect to see the same ingredient listed in SDS section 3. OSHA does not require that all chemical ingredients be listed in SDS section 8 – just those that are identified in section 3 and that have PELs, TLVs, and/or OELs.

Top Ten Violations - 2018

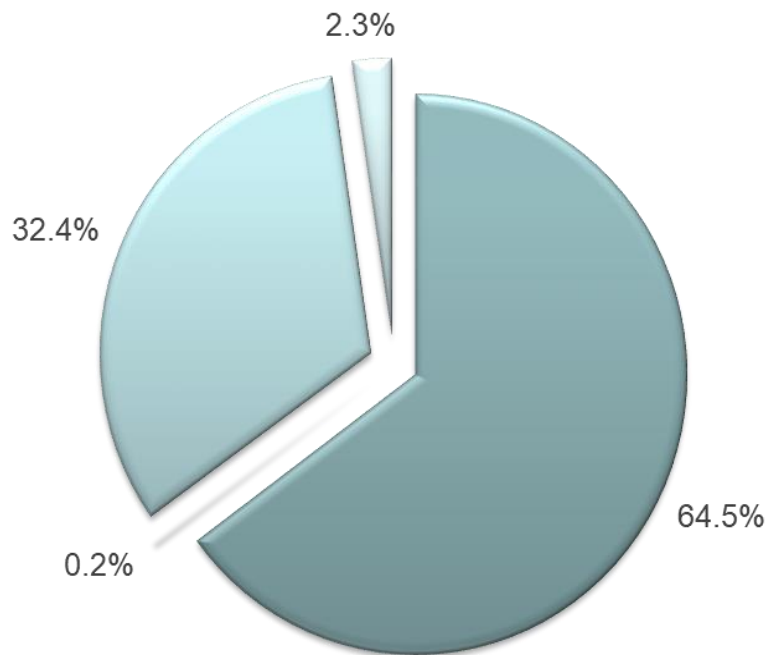
Hazard Communication - #2

OSHA's 2018 Top 10 Most Frequently Cited Violations



Federal OSHA Violations Cited 1910.1200 – FY 2018

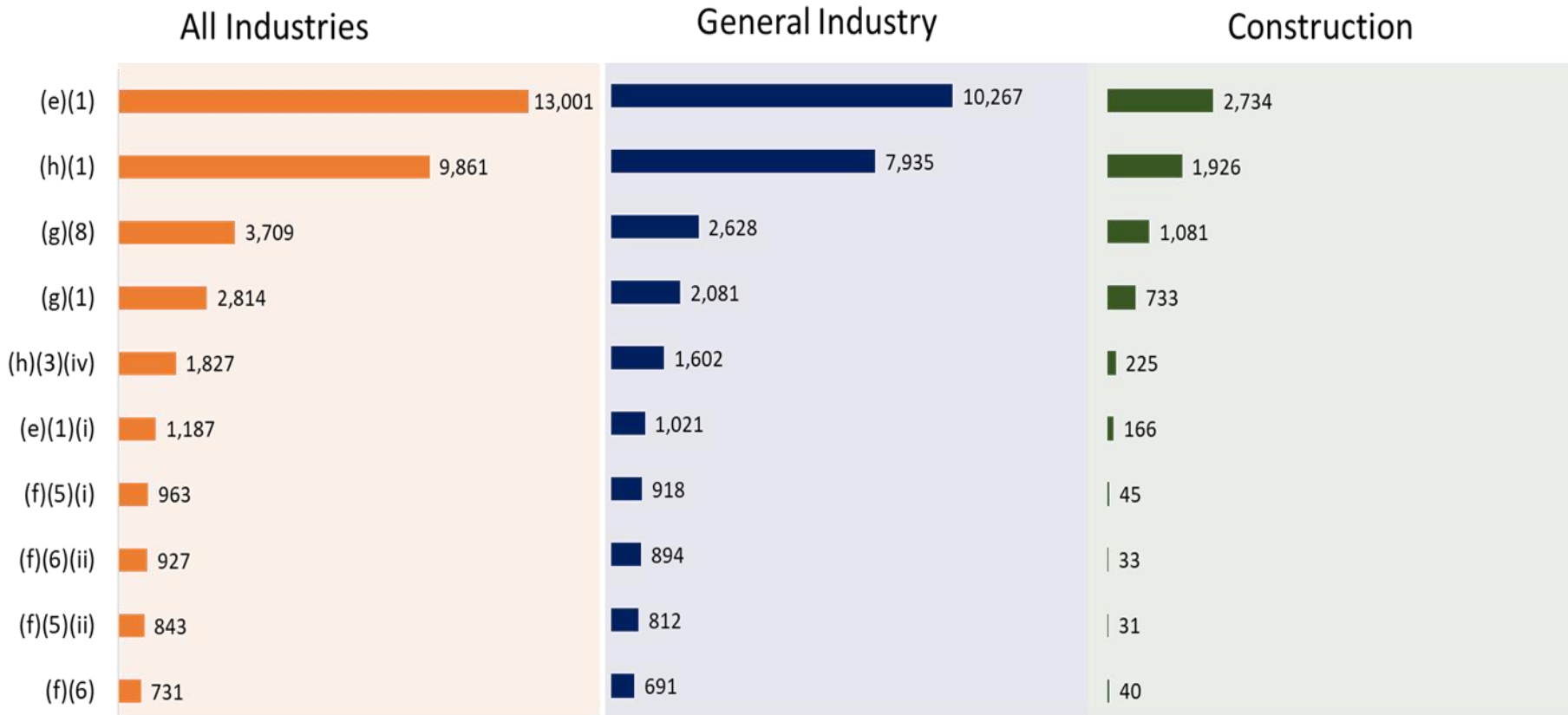
% HCS Violations



Serious – 64.5%
Willful – 0.2%
Repeat – 2.3%
OTS – 32.4%

Total initial penalties over
\$7.6 million

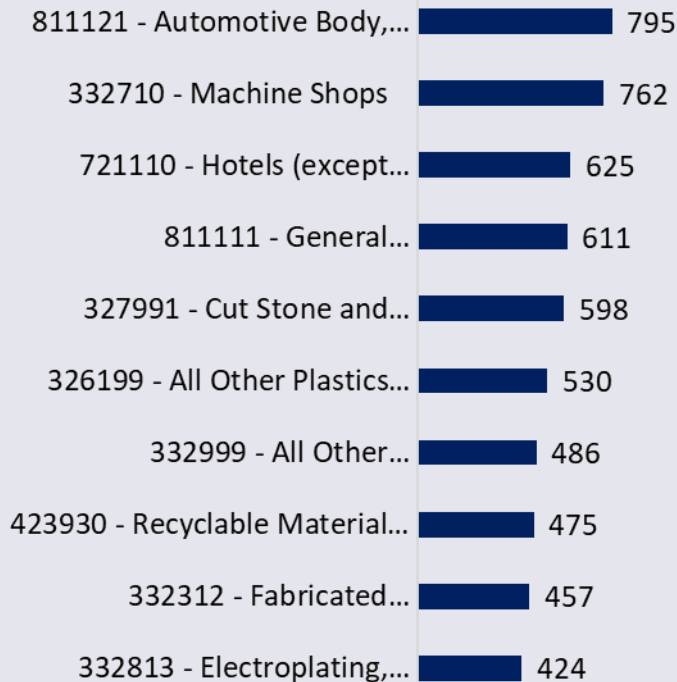
Most Frequently Cited Standards - 1910.1200 - March 26, 2012 – August 31, 2019*



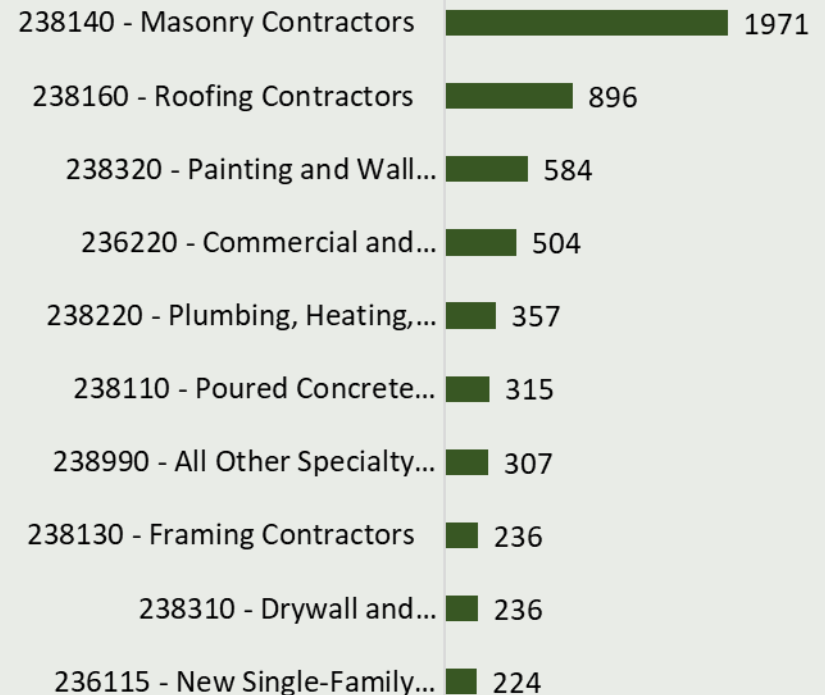
* = Federal data only; initial citations issued

Most Frequently Cited Industries – 1910.1200 - March 26, 2012 – August 31, 2019*

General Industry



Construction



* = Federal data only; initial citations issued

Most Frequently Cited Standards by Employer Size and Percentage of Total Violations*

Nr Employees	Non-Construction			Construction		
	1-100	101-250	251+	1-100	101-250	251+
1910.1200(e)(1)	8,819	637	811	2,669	39	26
1910.1200(h)(1)	6,106	719	1,110	1,838	50	38
1910.1200(g)(8)	1,894	172	562	1,036	29	16
1910.1200(g)(1)	1,653	146	282	710	13	10
1910.1200(h)(3)(iv)	1,176	164	262	218	4	3

Nr Employees	Non-Construction			Construction		
	1-100	101-250	251+	1-100	101-250	251+
1910.1200(e)(1)	86%	6%	8%	98%	1%	1%
1910.1200(h)(1)	77%	9%	14%	95%	3%	2%
1910.1200(g)(8)	72%	7%	21%	96%	3%	1%
1910.1200(g)(1)	79%	7%	14%	97%	2%	1%
1910.1200(h)(3)(iv)	73%	10%	16%	97%	2%	1%

* = Federal data only; initial citations issued

SAFE + SOUND



- Safe + Sound is a year-round campaign to encourage every workplace to have a safety and health program
- SCHC was a supporter

From SCHC July 2019 Newsletter



Safe+Sound Week: August 12 - 18, 2019

OSHA holds an annual *Safe+Sound Week* to bring awareness of workplace health and safety programs. During the week, they encourage participation and adoption of programs, share successes, and help to energize companies of all sizes and industries to embrace the best practices of hazard communication and safety implementation.

The Safe+Sound website has information on important resources, how to plan, promote and participate in events, earn certificates of participation, and more.



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