

Interim Guidelines For State Programs On Hazards Communication
(Right-to-Know)

Overview

The Chemical Manufacturers Association (CMA), actively supports the informed use of chemicals. On November 25, 1983, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued an occupational safety and health standard on hazard communication (Title 29 of the Code of Federal Regulations, Part 1910.1200).

The standard requires chemical manufacturers and importers to assess the hazards of chemicals which they produce or import, and all employers in SIC Codes 20 through 39 to provide information to their employees about the hazardous chemicals to which they may be exposed. The required hazard communication programs must include labels and other forms of warning, material safety data sheets (MSDS's), and employee education and training.

CMA believes that standard provides a comprehensive, uniform mechanism for manufacturing employees to receive hazard information. It ensures that downstream employers receive the information they need to inform their employees properly, and to design and implement employee protection programs. The Standard preempts State laws which address hazard communication requirements for employees in the manufacturing sector. Any state which desires to assume responsibilities in this area may only do so under the provisions of Section 18 of the Occupational Safety and Health Act (29 U.S.C. 651 et.seq.) which deals with state jurisdiction and state plans. A state must submit their intended requirements to OSHA for approval and show that they are at least as effective as the Federal Standard, do not unduly burden interstate commerce and that there is a compelling need for a different state standard. [Section 18(c) of the Act; 29 U.S.C. 667 (c)].

Guidelines

CMA recognizes that under certain circumstances states may want to expand the provisions of the federal standard. The following guidelines provide a framework under which states could administratively tailor the scope and coverage of hazard communication programs, without causing a burden on commerce or creating other conflicts with the federal standard.

I. Non-manufacturing employers -

CMA supports the federal standard as providing the basis for effective communication, through the hazards assessment process, the mandatory development and use of MSDS, hazard warning labels, and education

and training programs. The chemical industry recognizes that some states have adopted the standard and expanded the coverage to include employers in both the manufacturing sector (SIC codes 20 through 39) and non-manufacturing sector (all other SIC codes). CMA believes that it is good public policy to extend the protections provided to manufacturing employees under the federal standard to all employees. Any state desiring to expand the federal standard to cover all employers must do so through the provisions of Section 18 of the Occupational Safety and Health Act.

II. Emergency Response Information -

CMA supports cooperation between chemical manufacturers and state and local fire, safety and emergency service agencies. All available information regarding potential hazards associated with chemical manufacturing, processing and use should be available to agencies that are responsible for protecting the community in the event of emergency situations or accidental releases. CMA recommends that chemical manufacturers follow these local action guides:

A. Local plant managers and emergency response leaders must establish a regular communications forum to identify and evaluate local concerns, and to develop strategies for reducing hazardous materials emergency risks within both plant sites and the community. This effort should include, but not be limited to:

- Joint preincident emergency planning for the site, including regular site visits and drills;
- Joint preincident emergency planning for the community and drills to evaluate the plan;
- Industry providing access to and training in hazards information on materials which are present in quantity or are highly hazardous in storage or use;
- Emergency services and industry cooperation to assure that the roles and responsibilities in case of emergency are defined, command channels established and resources brought to bear promptly and effectively;
- Industry providing access to lists of available MSDS's, communicating the availability of the lists and providing MSDS's to appropriate agencies upon request.

- Identification of available specialized equipment, such as foam, personal protective equipment, suppression and detection equipment, etc., and make it available for use in an emergency; and
- Provisions for industry personnel to serve as technical advisors to the emergency services agencies in hazardous materials emergencies, both on-site and in the community.

B. Industry and emergency services leaders should propose, support and actively seek passage of "Hazardous Materials Emergency Response Good Samaritan" laws.

III. Community Access to Information -

Industry and state and local government leaders must work together in developing Community Right to Know programs. This joint effort should encourage providing appropriate information to improve response and cleanup safety, training, and risk management without undue administrative burden to state and local agencies, taxpayers or industry. Legislation could include requirements for employers to provide lists of hazardous materials present in a facility to appropriate state and local emergency services agencies and providing MSDS type information to those agencies when requested. State and local agencies which collect information regarding potentially hazardous substances (MSDS's, lists, etc.) through OSHA approved hazard communication programs should develop mechanisms to allow public access to the information, while protecting trade secrets.

In addition, many existing government programs give general access to large amounts of information regarding the potential health and environmental hazards that chemicals may pose. Federal, state and local programs developed under such laws as the Toxic Substance Control Act (TSCA), the "Resource Conservation and Recovery Act" (RCRA), the "Comprehensive Environmental Response Compensation Liability Act" (CERCLA), the "Clean Water Act" (CWA), and the "Clean Air Act" (CAA) contain strict compliance and reporting requirements. Public access to information is authorized through these laws and the "Freedom of Information Act." CMA opposes duplicative reporting requirements proposed under hazard communication programs.

CMA believes that all levels of government which collect and disseminate information must have

procedures under which manufacturers and employers can protect trade secrets and prevent the disclosure of confidential information, while at the same time providing necessary hazard and health care related information to the public.

IV. Material Safety Data Sheet and Labeling Requirements -

CMA strongly opposes any state modifications to the federal standard which require different MSDS or labeling requirements. CMA believes that the cut-off levels for assessing health hazards under the federal standard are reasonable and effective, and provide a uniform method of identification and warning through MSDS's and labels for all states. Any differences between state programs and the federal standard in these areas would only create confusion among the workforce, without contributing to overall safety and protection.

V. Protecting Trade Secrets -

Trade secret protections under the federal standard extend only to chemical identity, not hazard information. The standard assures that information regarding the potential hazards of a chemical is available to all employees and the public through labeling and MSDS's. Chemical identity information which is a trade secret is made available to those who have a legitimate need for it, such as treating physicians. CMA believes that the standard thus assures employee and public protection, while maintaining the confidentiality of bona fide trade secrets. CMA opposes any state modifications to the federal standard in the area of trade secrets.

ACTION REQUIRED: Approval of interim guidelines for use in the states.

CMA
EC-1/28/85
BD - 1/29/85

CMA 075079