State of Alaska
Department of Labor
Division of Labor Standards and Safety

DOSH Program Directive 89-3

Date: February 15, 1989

To: All OSH Staff

From: Tom Stuart, Director

Subject: Inspection Procedures for the Hazard Communication Standard, HCS 15.0101

A. Purpose. This program directive establishes policies and provides clarifications to ensure uniform enforcement of Hazard Communication Standard (HCS).

B. References:

1. Alaska Compliance Manual

2. Access to Employee Exposure and Medical Records, 8 AAC 61.225 - .295

3. Ethylene Oxide, 04.0305

C. Cancellation. DOSH Program Directive 86-12, CH-1, dated May 22, 1987, is cancelled.

D. Background. The final Hazard Communication Standard (HCS), Subchapter 15, was adopted on September 12, 1984 and amended on May 10, 1986, and April 15, 1987 and March 30, 1988.

1. The HCS incorporates both specification and performance requirements which are result-oriented, providing goals for achievement, and allowing employers the flexibility to develop a program suitable for their particular facility.

2. Compliance Officers (COs) and Industrial Hygienists (IHs) must exercise a high level of professional judgment during compliance inspections. This directive provides guidelines and evaluation strategies. The standard itself must be relied upon for further guidance.

3. The federal HCS has been challenged in federal courts and certain restrictions have been placed on OSHA by the federal Management and Budget Office (OMB). These restrictions do not apply to the Alaska HCS as the State standard has not been challenged in the courts and federal OMB has no authority to restrict state enforcement. COs and IHs should inform employers of this fact.

a. The U.S. Court of Appeals stayed enforcement of the federal OSHA HCS for the construction industry. The Alaska HCS applies to the construction industry and will be enforced on this industry.

b. OMB disapproved of the following requirements of the federal OSHA HCS: the requirement that Material Safety Data Sheets (MSDS) be provided on multi-employer worksites; coverage of any consumer product that falls with in the "consumer products" exemption included in Section 311 (e)(3) of the Superfund Amendment and Reauthorization Act (SARA) of 1986; and coverage of any drugs regulated by the Food and Drug administration (FDA) in the nonmanufacturing sector. The State will administratively follow the exemption of "consumer products" and drugs but must continue to enforce the requirement that MSDSs be provided on multi-employer worksites until such time that this standard is revised.

E. Enforcement Guidelines Pending Resolution of OMB Restrictions.

1. The state will follow OSHA's guidelines to exempt "consumer products" under Section 311(e)(3) of SARA and exempt nonmanufacturing employer from follow HCS requirements for drugs regulated by FDA. The following guidelines will be used on these two provisions:

a. All products, to the extent they are used for personal, family, or household purposes, or are present in the same form and concentration as products packaged for distribution and use by the general public, will be considered consumer products and, therefore, exempt from the standard. Additionally, the exemption applies whenever a consumer product is packaged in the same form and concentration as a consumer product whether or not it is used for the same purposes as the consumer product.

b. All citations for those products which do not appear to fall within the "consumer products" exemption shall be coordinated with the Deputy Director.

c. Employers in the nonmanufacturing sector are exempt form all obligations under the HCS for FDA-regulated drugs. This exemption does not affect FDA regulated drugs in the manufacturing sector.

F. Phased Implementation. The HCS designed to result in a downstream flow of hazard information from the producers of chemicals to industrial users of these products. Since receipt of such information is necessary to implement some parts of the standard, the effective date allowed for a phase-in period for compliance.

1. As of January 8, 1986, chemical manufacturers, importers, and distributors are required to label shipped containers of

hazardous chemicals, and to provide Material Safety Data Sheets (MSDS) to purchasers of these chemicals.

2. As of May 25, 1986, all employers in Alaska must be in compliance with all of the requirements of the standard except the requirement to provide Physical Agent Data Sheets (PADS) where such exposure exists and training on hazardous physical agents.

3. As of March 30, 1988, all employers must provide PADS and training on hazardous physical agents.

G. Organization of this PD. Compliance guidelines and policy considerations are addressed within the main part of this PD. Clarifications, interpretations, review aids and other information are provided in Appendices A through C. This format will permit easier updating and additions, as enforcement experience provides more information regarding these areas.

1. Appendix A of this PD provides clarifications of provisions of the standard where significant interpretations are necessary to ensure uniform enforcement and understanding.

2. Appendix B provides a sample letter for inquiries regarding missing or deficient MSDS.

3. Appendix C provides general guidelines for evaluation of hazards.

H. Inspection Guidelines. The following are general inspection guidelines:

1. Inspection Guidance. The HCS incorporates both specification and performance requirements which are result-oriented, providing goals for achievement, and, therefore, allowing employers flexibility to develop a program suitable for their particular facility. In evaluating compliance with the rule, COs and IHs should always consider whether the intent of the provisions have been met. COs and IHs must exercise a high level of professional judgement during compliance inspections. The standard itself, and the federal OSHA preamble accompanying it, must be relied upon for further guidance.

2. Inspection Resources. Both COs and IHs shall evaluate employer compliance with the HCS during the course of all inspections including records review inspections.

a. Both safety and health COs and IHs shall evaluate employer compliance with the written program requirements, use of labels, availability of MSDS and appropriate training.

b. COs and IHs shall consult with each other when specific expertise is necessary to evaluate elements of the employer's program. For example, an Industrial Hygienist may need to consult with a Safety Compliance Officer when

questions arise concerning fire protection statements on an MSDS.

3. Citation Guidelines. Citations for violations of paragraphs (e)(1), (f)(1), (g)(1) and (i) shall be issued as separate items, when there is a complete lack of hazard communication program.

4. Hazard Determination - Paragraph (d). Chemical manufacturers and importers are required to perform hazard determinations on all chemicals they produce or import. Hazard determination procedures must be in writing and made available, upon request, to employees, State OSH, National Institute for Occupational Safety and Health (NIOSH), and federal OSHA.

   a. If a chemical manufacturer has developed MSDS but does not have the written procedures available that were used to determine the hazards of the chemical(s), then a violation of paragraph (d)(6) exists and shall be recommended for citation. This requirement also applies if the chemical manufacturer relies on MSDS provided by upstream chemical manufacturers (i.e., the chemical manufacturer's written hazard determination procedures could simply state that it is relying on the upstream chemical manufacturer's information).

   b. If no written procedures are available and the chemical manufacturer has not obtained or developed an MSDS, then apparent violations of paragraphs (d)(1) and (d)(6) exist and shall be recommended for citation. (Refer to H.8.d. of this PD for guidance.)

   c. When deficiencies exist in the chemical manufacturer's or importer's hazard determination, then the specific deficiencies shall be documented and recommended for citation under paragraph (d)(2).

   d. The employer shall be asked to forward the written hazard determination procedures to the Chief, Industrial Health Compliance (IHC) when they are not immediately available at the establishment. A reasonable time period, not exceeding 5 working days, shall be allowed for receipt in the Anchorage office.

   e. COs and IHs shall determine the adequacy of a company's hazard determination program primarily by assessing the outcome of that determination; i.e., the accuracy and adequacy of the information on labels and MSDS. The written hazard evaluation procedures generally describe the process followed; they do not have to address each chemical evaluated.

      (1) Although not required, many companies will keep records of individual chemical evaluations. In the event of a finding by the CO or IH of an inaccurate determination,

as indicated by inaccurate information on the MSDS or label, these records may be useful in identifying where the company's evaluation differed from Alaska OSH's and for documentation of appropriate violations.

(2) In general, the hazard evaluation procedures should address the following:

(a) The person(s) responsible for evaluating the chemical(s).

(b) The sources of information to be consulted. Evaluators should have access to a wide range of sources. While well-known chemicals could be adequately evaluated by consulting established reference texts, others will require searches of bibliographic data bases.

(c) Criteria to be used to evaluate the studies, including those parameters addressed by the HCS (i.e., statistical significance; conducted according to scientific principles).

(d) A plan for reviewing information to update the MSDS if new and significant health information is found.

f. Citations. Citations for violations of paragraph (d)(1) shall be issued when the employer has failed to perform a hazard determination. Paragraphs (d)(2), (d)(3) and (d)(4) of the standard shall be used, as appropriate.

g. Specific Documentation. The following items shall be documented in addition to those required by the Compliance Manual, Chapter IV, C.8. (page IV-39) when citations are recommended under paragraph (d):

(1) The name of the chemical.

(2) Name of person preparing the hazard determination, MSDS, who they work for, etc.

(3) To whom the chemical is being sold; i.e., name, location of the establishment; and, where possible, document that the chemical is sold to an employer or distributor, and that employer or distributor, and that employees, therefore, may be exposed downstream.

(4) Document the number of employees in the establishment being inspected that may be exposed (including potential expose) to the chemical.

(5) Health and physical hazards of the chemical.

5. Written Hazard Communication Program, Paragraph (e). COs and IHs shall review the employer's written hazard communication program to determine if all applicable requirements of paragraph (e) have been addressed. The review of the written program shall be done first, prior to ascertaining whether the elements of the program have been implemented in the workplace. The length and complexity of the written program will vary from site to site. The CO or IH shall determine whether or not the employer has addressed the issues in sufficient detail to ensure that a comprehensive approach to hazard communication has been developed. If no program exits, the employer shall be cited under paragraph (e)(1). An effective program need not include all of the elements listed below. They are provided to serve as an evaluation tool. The primary considerations should be whether the program adequately addresses the issues, and whether employees are permitted ready access to required information. The written program need not be lengthy or complicated, but should adequately address each of these required components in the program. In general, the written program should include consideration of the following elements:

a. Labels and other Forms of Warning.

(1) Designation of person(s) responsible for ensuring labeling of in-plant containers.

(2) Designation of person(s) responsible for ensuring labeling on shipped containers.

(3) Description of labeling system(s) used.

(4) Description of written alternatives to labeling of in-plant containers, if used.

(5) Procedures to review and update label information when necessary.

b. Material Safety Data, Sheets and Physical Agent Data Sheets.

(1) Designation of person(s) responsible for obtaining/maintaining the MSDS and PADS.

(2) How such sheets are to be maintained (e.g., in notebooks in the work area(s), by a computer terminal, or in a pick-up truck at the jobsite), and how employees can obtain access to them.

(3) Procedure to follow when the MSDS is not received at time of the first shipment and when a PADS is not available.

(4) For chemical manufacturers or importers procedures for updating the MSDS when new and significant health information is found.

(5) Description of alternatives to actual data sheets in the workplace, if used.

c. Training.

(1) Designation of person(s) responsible for conducting training.

(2) Format of the program to be used (audiovisuals, classroom instruction, etc.).

(3) Elements of the training program -- compare to the elements required by the HCS (paragraph (i)).

(4) Procedure to train new employees at the time of their initial assignment to work with a hazardous chemicals, and to train employees when a new hazard is introduced into the workplace.

(5) Guidelines on training programs prepared by the OSHA Office of Training and Education (Vol. 49 FR 30290, July 27, 1984), can be used to provide general information on what constitutes a good training program.

d. Does a list of the hazardous chemicals exist in each work area or a central location?

e. Are methods the employer will use to inform employees of the hazards of nonroutine tasks outlined?

f. Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work area?

g. Does the plan include the method the employer will provide other employer(s) with a copy of the MSDS and/or PADS how the employer will make MSDS available at a central location for each hazardous chemical and physical agent that the other employer's employee may be exposed to while working?

h. Does the plan include the methods the employer will use at multi-employer worksites to inform other employers of any precautionary measures that need to be taken to protect their employees?

i. For multi-employer workplaces, are the methods the employer will use to inform the other employer(s) of the labeling system used described?

j. Is the written program made available to employees and their designated representatives?

CITATIONS:

Paragraph (e)(2)(A) shall be cited when no lists are developed or when they are incomplete.

Paragraph (e)(2)(B) shall be cited when a system does not exist to inform employees of the hazards associated with nonroutine work tasks, and with chemicals contained in unlabeled pipes.

If a written hazard communication program exists but is found deficient, group the deficiency indicated in paragraph (e)(1) with that found in (f), (g) or (i). Cite (e)(1) as an individual item only if no written program exits.

6. Labels and Other Forms of Warning, Paragraph (f).

a. Labels or other markings on each container of chemicals must include:

(1) Identity (can be any chemical or common name designation for the individual chemical or mixture, as long as the term used is also used on the list of hazardous chemicals and the MSDS); and

(2) Appropriate hazard warnings. (See Appendix A for interpretation of this requirement.)

b. Labels on shipped containers must also include the name and address of the chemical manufacturer, importer, or other responsible party.

c. The standard allows considerable flexibility in format and content of labels, as long as the minimal information requirements are met.

d. COs and IHs shall determine that containers are labeled, that the labels are legible, and that they are prominently displayed. The accuracy of the label information is to be assessed for a representative number of chemicals.

e. The CO or IH shall determine whether the label identity can be cross-referenced with the MSDS and the list of hazardous chemicals.

CITATIONS:

Appropriate paragraphs from paragraph (f)(1)(A) through (f)(1)(C) shall be cited when deficiencies are found relating to products that are shipped downstream. Paragraphs (f)(4)(A) and (f)(4)(B) of the standard shall be cited when a hazardous chemical is created and used only in-house.

f. Special Documentation. The following items shall be documented in addition to those required by the Compliance

Manual, Chapter IV, C.8, when citations are recommended under paragraph (f):

(1) The name of the chemical.

(2) Name of person preparing the hazard determination, label, who they work for, etc.

(3) To whom the chemical is being sold; i.e., name, location of establishment; and where possible, document that the chemical is sold to employers or distributors and that employees may be exposed.

(4) Document the number of employees in the establishment being inspected that may be exposed (including potential exposure) to the chemical.

(5) Health and physical hazards of the chemical. Guidance on carcinogen labeling may be found in Appendix A of this instruction.

g. There are no labeling requirements for physical agents.

7. Material Safety Data Sheets, Paragraph (g).

a. Development of MSDS. The standard requires chemical manufacturers and importers to obtain or develop a material safety data sheet for each hazardous chemical they produce or import. The CO or IH shall evaluate the compliance status of this provision by:

(1) Examining a representative number of MSDSs to determine that the MSDS have been obtained or developed, and that the MSDS have been prepared in accordance with the requirements of paragraphs (g)(2)-(5).

(2) Reviewing a representative number of MSDSs to ensure that the information regarding the health and physical hazards is technically accurate. The State through its IMIS computer has access to MSDS references on the OSHA Computerized Information System. Assistance is also available from the state funded IH in charge of the hazard communication training program in the Consultation and Training unit.

(a) The CO or IH is to complete the MSDS review by using all available literature and computer references in the Anchorage office. The CO or IH is to complete this review by following the procedures outlined in Hazard Evaluation Procedures, Appendix C of this PD. If the hazard information is not available or cannot be obtained in the Anchorage office then the C&T IH shall be consulted.

(b) If the C&T IH does not have information on the chemical in question, then the he/she shall contact the OSHA's Technical Data Center.

NOTE: Published MSDS reference files are copy righted, and therefore, must not be copied for distribution to the public.

(3) PUblished MSDS are to be used as a screening resource for the CO or IH. The information on these MSDS has not been evaluated by Alaska OSH to determine if it is accurate or required in every situation. It should be used to help identify which areas require further research or where information is lacking on the MSDS being reviewed. Citations may be issued only when Alaska OSH can independently verify the information. This shall be done by completing a review of the MSDS following the procedures in Appendix C of this PD.

(4) The number of MSDSs and the particular MSDS selected for review will depend upon several factors, such as:

(a) The number of chemicals in the workplace.

(b) The severity of the hazards involved.

(c) The completeness of the MSDS in general.

(d) The volume of the chemicals used.

b. Transmission of MSDS. Paragraph (g)(6) requires chemical manufacturers and importers to provide the appropriate MSDS to distributors and employers using hazardous chemical(s) at the time of the initial shipment and with the first shipment of the hazardous chemical(s) after the MSDS has been updated. The MSDS must be shipped with the containers of the hazardous chemical(s) or sent prior to or at the time of the shipment.

(1) Furthermore, paragraph (g)(7) requires distributors to provide MSDS and any updated MSDS for hazardous chemicals to other distributors and employers. Retail distributors, which have been commercial accounts, are required to provide an MSDS to such employers upon request and to notify them of the availability of MSDS for hazardous chemicals. Notification may be accomplished by any means as long as the customer is made aware of the availability of the MSDS. A commercial account is one where a retail distributor has made an arrangement to sell hazardous chemicals to an employer, generally in large quantities over time and at costs that are below the regular retail price. For an employer who incidently purchases a hazardous chemical from a retail distributor that does not have

commercial accounts, the retail distributor need only provide the employer with the name and address of the supplier from which the MSDS can be obtained.

NOTE: Employers may also contact the Consultation and Training unit of Alaska OSH for a MSDS. Alaska OSH has MSDS subscription service and also has obtained various MSDSs from manufacturers in order to assist employers and the public in obtaining MSDSs.

(2) The CO or IH shall ensure compliance with these provisions of the standard by reviewing the chemical manufacturer's importer's, or distributor's program for transmitting MSDS and updated MSDS to downstream customers.

c. Employer MSDS Files. Paragraph (g)(1) requires employers to have MSDS for each hazardous chemical they use. In addition, paragraph (g)(8) requires employers to maintain copies of the appropriate MSDS for each hazardous chemical used in the workplace, and to ensure that MSDS are readily accessible to employees when they are in their work areas during each work shift.

d. Citation and Referral Procedures for Employers. Where employers are relying on the MSDS/label supplied by chemical manufacturers or importers, the following procedures apply:

(1) Employers are not to be held responsible for inaccurate information on the MSDS/label which they did not prepare and they have accepted in good faith from the chemical manufacturer, importer or distributor. The CO or IH shall send copies of the MSDS/label with inaccurate information to the Chief IH in the Anchorage office. The Chief IH shall write to the supplier requesting action within 30 days using the sample letter in Appendix B of this PD.

(2) If MSDS/labels are missing or have not been received for a hazardous chemical(s), the employer shall be cited for violation of paragraph (g)(1) with a 15-day abatement period unless the employer can document that a good faith effort has been made to obtain the information. A copy of a letter or documentation of a phone call to the supplier are examples of good methods for establishing a good faith effort. An employer contacting Alaska OSH for assistance in obtaining the missing information is also an excellent example for a good faith effort.

a. The CO or IH shall document in the case file that the employer had knowledge that the chemical is hazardous as defined by the standard and, therefore, that an MSDS or label is required.

Such knowledge could be from the hazard warning on the received label or MSDS, receipt of an MSDS or label for similar products, in-house resources (staff safety and health personnel), recognized industry hazards associated with a chemical, etc.

b. COs and IHs shall recommend that the employer write to both their supplier and the product manufacturer or importer, if they are not the direct supplier, for the MSDS or label.

(3) If at the end of the 15-day abatement period the employer still has failed to receive the requested information, the Chief IH shall concurrently call and send a certified letter to the manufacturer, importer, or distributor to obtain the required information. (See sample letter in Appendix B.) COs and IHs shall inform employers that it is their responsibility to contact Alaska OSH before the expiration of the 15-day abatement date to request a petition to modify abatement or be subject to a failure to abate if the abatement is not accomplished within the 15 days.

(a) The Consultation and Training Section should expect to receive requests from employers to assist them in obtaining MSDS or labels in situations where an inspection has not been conducted. All calls, not relating to an ongoing inspection, shall be documented on a log established for this purpose.

(b) If the Chief IH determines that the employer has tried to obtain the information, and has not been able to do so, a letter and telephone call to the supplier or manufacturer is the appropriate action in this situation as well. The Chief IH shall document all actions taken in the case file.

(4) If the supplier or manufacturer fails to respond within a reasonable time (e.g., 30 days), a referral (OSHA-90 Form), with completed background information attached to it (including a copy of Alaska's right-to-know law and a copy of Alaska HCS (Subchapter 15), is to be sent through the Regional Administrator for Region X who will refer it to the OSHA Regional Office within whose jurisdiction the supplier or manufacturer does business. The letter requesting such assistance should be signed by the Director.

FIGURE 1

GUIDE FOR REVIEWING MSDS COMPLETENESS

(1) Do chemical manufacturers and importers have an MSDS for each hazardous chemical produced or imported?

(2) Do employers have a MSDS for each hazardous chemical used?

(3) Does each MSDS contain at least the following information:

(i) Does each MSDS contain the identity used on the label?

(ii) Does each MSDS contain the chemical and common name(s) for single substance hazardous chemicals?

(iii) For mixtures tested as a whole:

(A) Does each MSDS contain the chemical and common name(s) of the ingredients which contribute to these known hazards?

(B) Does each MSDS contain the common name(s) of the mixture itself?

(iv) For mixtures not tested as a whole:

(A) Does each MSDS contain the chemical and common name(s) of all ingredients which are health hazards (1 percent concentration or greater), including carcinogens (0.1 percent concentration or greater?)

(B) Does each MSDS contain the chemical and common name(s) of all ingredients which are health hazards and present a risk to employees in concentrations of less than 1 percent or .1 percent for carcinogens.

(v) Does each MSDS contain the chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture?

(vi) Does each MSDS contain the physical and chemical characteristics of the hazardous chemical (vapor pressure, flash point, etc.)?

(vii) Does each MSDS contain the physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity?

(viii) Does each MSDS contain the health hazards of the hazardous chemical (including signs and symptoms, medical conditions aggravated)?

(ix) Does each MSDS contain the primary routes of entry?

(x) Does each MSDS contain the OSHA permissible exposure limit (PEL)? the American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLV)? other exposure limit (including ceiling and other short-term limits)?

(xi) Does each MSDS contain information on carcinogen listings (reference OSHA regulated carcinogens, those indicated in the National Toxicology Program (NTP) annual report and those listed by the International Agency for Research on Carcinogens (IARC))?

NOTE: Negative conclusions regarding carcinogenicity, or the fact that there is no information, do not have to be reported unless there is a specific blank for carcinogenicity on the form.

(xii) Is each MSDS in English?

(xiii) Does each MSDS contain generally applicable procedures and precautions for safe handling and use of the chemical (hygienic practices, maintenance and spill procedures)?

(xiv) Does each MSDS contain generally applicable control (engineering controls, work practices, or personal protective equipment)?

(xv) Does each MSDS contain emergency and first aid procedures?

(xvi) Does each MSDS contain date of preparation or last change?

(xvii) Does each MSDS contain name, address and telephone number of the responsible party?

(4) Are all sections of the MSDS completed?

NOTE: This is for use as an aid for inspections. It is NOT a form.

(a) Where the supplier or manufacturer is in the Alaska, the Chief shall deal directly with those suppliers or manufacturers located within the State.

(b) Where the supplier or manufacturer is under another State plan jurisdiction, the OSHA-90 Form is to be completed and sent to the OSHA Regional Administrator in which jurisdiction the State plan State is located. The Chief will request that a hazard communication inspection be conducted. A copy of the request will be sent to the Region X Regional Administrator.

(5) If the State refers a request for a MSDS/label to the Region X OSHA per paragraph (4) of this section, Region X will refer it to the OSHA jurisdiction where the upstream supplier or manufacturer is located. OSHA will normally conduct an abbreviated inspection (i.e., limited to the requirements of the HCS) or will write a letter in accordance with the nonformal complaint procedures in OSHA's Field Operations Manual. If the employer's response is inadequate or no response is received as a result of the letter, then an abbreviated inspection will be conducted by OSHA. OSHA will provide the findings and the MSDS and/or labels obtained to the State.

NOTE: OSHA will respond to referrals from State plans for the purpose of obtaining a MSDS/label from a supplier or manufacturer which has not provided a MSDS/label to an employer in the referring State, but will not act on a referral from a State if it is for the purpose of obtaining a MSDS for inclusion in a State-maintained MSDS file and/or repository.

(6) The procedures used by the OSHA Regional Administrator to respond to referrals from the State are explained in OSHA Instruction CPL 2-2.38B, dated August 15, 1988.

(7) If OSHA or a State Plan State, refers a complaint that a supplier or manufacturer in Alaska has refused to provided MSDSs/labels, the Chief IH shall ensure that an abbreviated inspection is conducted of that supplier or manufacturer to assure compliance with the HCS requirements. The findings from this inspection must be communicated to the referring office. Also, the MSDSs/labels obtained from the supplier or manufacturer shall be sent to the referring office.

e. Citation and Referral Procedures for Distributors. Where the CO or IH determines that a distributor is not transmitting the MSDS, the following procedures apply:

(1) The distributor shall be cited for violation of paragraph (g)(7), with immediate abatement required, unless the distributor did not receive the MSDS from

the chemical manufacturer, importer, or distributor. In such cases the abatement period will be 15 days.

(2) When a distributor has not received a MSDS from the supplier, the CO or IH shall recommend that the distributor write to the chemical manufacturer, and, if applicable, other distributor which supplied the chemical. If at the end of the 15-day abatement period, the distributor has failed to receive the MSDS, the Chief IH shall follow the referral procedures outlined in H.7.d.(3) through H.7.d.(7) of this PD.

(3) Abatement shall include transmitting MSDS to all customers (employers) of the distributor receiving the chemical(s) retroactive to September 12, 1984.

f. Distributor MSDS. In cases where a distributor substitutes its name for that of the chemical manufacturer or importer and those MSDS are inaccurate or incomplete, citations shall not be issued to the distributor. Distributors, however, who substitute their names on the MSDS for the "responsible party" must be able to supply the required additional information on the hazardous chemical and appropriate emergency procedures, if necessary. Failure to be able to provide the additional information will result in a violation of (g)(2)(L). The following procedures shall be relied upon:

(1) The CO or IH shall assure that no other changes were made to the MSDS other than name, address, and telephone number.

(2) The Chief IH shall write to the chemical manufacturer or importer utilizing the sample letter provided in Appendix B of this PD.

(3) Where the chemical manufacturer fails to respond within the time period specified in the letter, a referral shall be made according to the procedures outlined under H.8.d.(4) through H.8.d.(7) of this PD.

g. Specific Documentation. The following items shall be documented in addition to those required by the Compliance Manual when citations are recommended under paragraph (g):

(1) The name of the chemical.

(2) Name of the person preparing the hazard determination, MSDS, who they work for, etc.

(3) To whom the chemical is being sold; i.e., name, location of establishment and, where possible, document that the chemical is sold to employers and that employees may be exposed.

(4) Document the number of employees in the establishment being inspected that may be exposed (including potential exposure) to the chemical.

(5) Health and physical hazards of the chemical.

(6) Copies of inaccurate and/or incomplete MSDS shall be included in the case file.

h. Compliance Assistance. If the Chief IH encounters any difficulty in following this procedure at any point in the process, the Director shall be consulted for assistance.

8. Employee Information and Training, Paragraph (i).

a. The training requirements of the HCS will generally complement rather than satisfy the existing training requirements contained within other Alaska OSH standards (i.e., expanded health standards, construction requirements, etc.). COs and IHs shall continue to ensure that employers' obligations under specific training provisions of other standards are met.

b. There will also be instances where there is an overlap in the training requirements of 05.030(c), ACC, Safety Training and Education, and the HCS. In those instances where the training deficiency is covered by both standards (05.030(c) and 05.045(k), ACC) the CO or IH shall issue a citation for 05.045(k), ACC, which is the more specific standard.

c. Training programs must be evaluated through program review and discussion with management and employees. The following questions provide a general outline of topics to be reviewed:

(1) Employee training:

(a) Has a training and information program been established for employees exposed to hazardous chemicals?

(b) Is this training provided at the time of initial assignment and whenever anew hazard is introduced into work areas?

(c) Have all new employees at this location received training equivalent to the required initial assignment training?

(2) Information transmitted to employees:

(a) Have employees been informed of the requirements of this standard?

1 That employers are required to have hazard communication programs, and

2 Details of the existing comments of the program in their workplace.

(b) Are employees informed of:

1 Any operations in their work area where hazardous chemicals are present?

2 Where the written materials required under the standard are kept, including the written hazard evaluation procedures, written hazard communication programs, lists of hazardous chemicals, and MSDS required by this section?

(3) Required training methods and observations to detect the presence of a hazardous chemical in the work area:

(a) Are employees familiar with the visual appearance, smell, and alarms from monitoring devices that will result when chemicals are released in the workplace?

(b) Have employees been trained specifically about the hazards of the chemicals in their work areas?

(c) Was training subject matter organized by:

1 Specific chemical?

2 Categories of hazard?

(d) Are employees aware that information is available on specific hazards of individual chemicals through the MSDS?

(e) Does training include the measures employees can take to protect themselves from the hazards?

(f) Does training indicate the specific procedures implemented by the employer to provide protection, such as work practices and proper use of personal protective equipment?

(g) Does the training explain the hazard communication program implemented in the workplace? Including:

1 How to read and interpret information on labels and MSDS.

2 How employees can obtain and use the available hazard information.

(4) Interviews will provide general information to the CO or IH regarding the training program. Obviously, it cannot be expected that employees will totally recall all information and be able to repeat it. Employees must be aware that they are exposed to hazards, know how to obtain and use information on labels and MSDS, and know and follow appropriate work practices. However, if the CO or IH detects a trend in employee responses that indicates training is not being conducted, or is conducted in a cursory fashion that does not meet the intent of the standard, a closer review of the written program and its implementation may be necessary. The purpose of the standard is to reduce chemical source illnesses and injuries through acquisition of hazard information. This can occur only if employees receive the information in usable form through appropriate training.

(5) Some employers will voluntarily keep records of training sessions. These could be helpful to COs and IHs in assessing compliance with the standard.

(6) Citations shall be issued under paragraph (i) when training is not provided.

9. Trade Secrets, Paragraph (j). Only specific chemical identities may be withheld under the HCS trade secret provisions. Even when a chemical's identity is rightfully withheld as a trade secret, its release may be required by the trade secret access provisions in paragraph (j).

a. Where Alaska OSH believes that the chemical manufacturer, importer or employer will not be able to support the claim of trade secrets, the withholding of a specific chemical identity shall be cited as a violation of paragraph (g)(2).

b. Where Alaska OSH does not question the claim that a specific chemical identity is a trade secret, but the employer has failed to comply with paragraph (j)(1)(A), (B), (C), or (D), or with (j)(2) or (3) such failure shall be cited under 15.0101(g)(2), stating the deficiency in the example section of the citation. For example, the employer claims a trade secret exists but failed to indicate on the MSDS that the specific chemical was being withheld for that reason, as required under paragraph (j)(1)(C).

(1) COs and IHs evaluating the MSDS and hazard determination programs may request disclosure of trade secret identities under paragraph (j)(12) of the HCS.

(2) Alaska OSH shall take all steps feasible to protect trade secret identities, including secure filing and return of information when its use is complete.

10. Response to Medical Emergencies. The HCS permits a treating physician or nurse to designate the existence of a medical emergency requiring the immediate disclosure of trade secrets (paragraph (j)(2)). Complaints received from treating physicians and nurses relating to a medical emergency shall be classified as nonformal in accordance with the Compliance Manual. Due to the potential risk to life and/or health, the Chief, I.H. shall ensure that these complaints are processed as soon as received. The following procedures shall apply:

    a. The Chief, I.H. or his/her designee shall contact the manufacturer of the chemical by telephone. Telephone numbers are required on the MSDS. The manufacturer shall be informed of the standard's requirements and requested to provide immediately the needed information directly to the treating physician or nurse.

    b. Failure to disclose the information shall result in the issuance of a willful citation. The chemical manufacturer will frequently be located under a different State's jurisdiction. Apparent violations shall be referred to the office of jurisdiction for investigation and the issuance of citations per paragraph H.7.d.(3) through paragraph H.7.d.(7).

    c. Concurrently, the official of the jurisdiction where the chemical manufacturer is located shall coordinate obtaining an administrative subpoena ordering the immediate disclosure of the needed information.

11. Response to Nonemergency Referrals. When health professionals providing medical or other occupational health services to exposed employees, and to employees or designated representatives, are denied access to trade secret information, the matter may be referred to Alaska OSH for enforcement proceedings.

    a. As stipulated in the standard, Alaska OSH should receive from the referring health professional, employee, or designated representative a copy of the written request for the trade secret information, as well as a copy of the written denial provided by the holder of the trade secret. These two written documents shall be reviewed by the Chief, I.H. to determine the validity of the request and the trade secret claim. The legal counsel will provide assistance in this regard.

    b. If the Chief, I.H. does not believe that there is enough information upon which to base a decision, he/she may contact either the trade secret requester or the trade secret holder for further information. Such requests shall be documented in the case file.

I. Classification and Grouping of Violations. The procedures in the Compliance Manual, Chapters IV, C.8 and Chapter V.C shall be followed; however, if deviations appear appropriate, they shall be coordinated with the Director and Deputy Director. The following guidelines shall be applied:

1. Generally, violations of HCS shall be issued as separate violations for each provision of the standard unless the grouping of the items could result in a higher gravity violation. For example, the lack of a label, as well as the lack of training program for a specific chemical, could result in a situation where improper use creates a serious hazard.

2. Serious violations shall be issued whenever a deficiency in the program can contribute to a potential exposure capable of producing serious physical harm or death. Violations for failure to supply MSDS, or the labeling of containers when shipped to downstream users, generally should not be classified as serious.

   a. Serious citations should be considered only for these violations when there is documentation which demonstrates that the downstream employer is using the chemical in a manner which could result in death or serious physical harm to employees.

   b. Documentation could be in the form of a referral generated as a result of observation at downstream user's workplace. In addition, the CO or IH must document that the employer knew or could of known of the violation.

3. Willful violations should be considered in accordance with the guidelines of the Compliance Manual, i.e., the employer committed an intentional and knowing violation of the law:

   a. The employer was aware that a hazardous condition existed and did not make a reasonable effort to eliminate the condition, and

   b. The employer was aware that the condition violated a standard and was aware of the standard.

   c. In addition, willful citations shall be issued when an employer refuses to provide specific chemical identity information in a medical emergency (15.0101(j)(2)).

J. Interface With Other Standards. The HCS was designed to prevent duplication with other Alaska OSH standards. In some cases an employer's duties under other Alaska OSH standards can be interfaced with requirements of the HCS resulting in simplified compliance.

1. Medical Records Access. The Access to Employee Exposure and Medical Records regulation (8 AAC 61.270) and the HCS overlap with regard to MSDS. MSDS are specifically identified as exposure records under 8 AAC 61.270(u)(5). Each MSDS received by

an employer must be maintained for at least 30 years as required at 8 AAC 61.260(b)(5). The access regulation does offer an alternative to keeping MSDS at 8 AAC 61.270, which reads as follows:

"Material safety data sheets and records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least 30 years."

a. HCS 15.0101(e)(1)(A) requires that employers maintain a list of hazardous chemicals as part of the written hazard communication.

b. Employers might simplify their responsibilities as they relate to the overlap between these two standards, by incorporating the requirements under 8 AAC 61.270 with those for the HCS 15.0101(e)(2)(A). That is, the list of hazardous chemicals could include information on where chemicals were used and when it was used. These lists would then have to be kept for at least 30 years.

2. Other Health Standards. HCS 15.0101(f)(3) defers labeling requirements to the specific standard when one exists. For example, the Ethylene Oxide (ETO) standard provides a different labeling requirement than the HCS. Labels do not have to be affixed to containers of ETO, unless the product is capable of producing employee exposure at or above the action level of 0.5 ppm as an 8-hour time weighted average (ETO 04.0305(j)(1)(B)).

K. Requirements Unique to Alaska HCS. There are several requirements in Alaska's HCS that are not contained in OSHA's HCS. They are as follows:

1. An employer must provide, if requested by an employee, MSDSs within 15 calendar days after the request is received (HCS 15.0101(e)(1)(B)). If an employer fails to meet this deadline, he/she must take measures to assure that employees are not exposed to the substance to which the copy of information pertains until the copy or information is made available to the employee who made this request. For citation purposes, violations of this provision will not be grouped with any other violation. Classification of the violation will follow the guidelines set out in paragraph H of this PD.

2. An employer must include information and training about physical agents if employees are known to be present and their employees can be exposed under normal conditions of use or in a foreseeable emergency to physical agents. This provision, however, does not apply unless employees are exposed to the physical agent in excess of the threshold limits established in the 1986-1987 edition of "Threshold Limit Values in the Work Environment" published by the American Conference of Governmental Industrial

Hygienists. Therefore, the CO or IH must first prove that there is an over exposure to one or more physical agents before this provision can be cited. Alaska OSH has developed Data Sheets for these physical agents and they are available at no cost to employers and other interested persons from the Juneau or Anchorage OSH offices. The Chief IH should be consulted before this provision is cited.

3. An employer must display a poster outlying the rights of employees under AS 18.60.065 - .068 (HCS 15.0101(h)(1)). This poster is available from the Department. However, if an employer decides to design a poster that meets this requirement, he/she may do so. The employer must also post either all the MSDSs in the workplaces (HCS 15.0101(h)(2)) or a list of chemical names and product names of each toxic or hazardous substance to which an employee may be exposed in the workplace. If an employer chooses the latter, he/she must identify where MSDSs are located and assure that this location is accessible to employees who may want to inspect MSDSs at any time during the work shift. COs and IHs shall follow the procedures outlined in Compliance Manual Chapter VI.A.8 in citing and classifying violations of these posting requirements.

L. Evaluation. In keeping with agency policy, an evaluation of the effectiveness of this directive. The evaluation will be written by the Chief, I.H. and shall be sent to the Deputy Director by October 30, 1989. Elements to be considered in the evaluation are the following:

1. Are enforcement and citation policy clear?

2. Particular problems not addressed or inadequately addressed in this PD?

3. Parts of this PD which are not useful?