

Cancelled

State of Alaska


Department of Labor

Division of Labor Standards and Safety

DOSH Program Directive 91-4

Date: April 5, 1991

To: All OSH Staff

 From: Robert W. Libbey, Director

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

- A. Purpose. This Program Directive (PD) establishes policies and provides clarifications to ensure uniform enforcement of the 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
 4. Air Contaminants, 04.0101
 5. AS 18.60.065 - 068
- C. Scope of HC 15.0101
- The Alaska Legislature in 1983 enacted legislation, AS 18.60.065 - 068 that requires all employers to provide training and education to their employees on the hazardous chemicals they have in the work place. Alaska adopted Subchapter 15, Hazard Communication Code, to carry out the provisions of this law. Therefore, Subchapter 15 applies to all industries in the State.
- D. Cancellation. DOSH Program Directive 89-3, dated February 15, 1989, is cancelled.
- E. 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.

- F. Organization of this Program Directive. Compliance guidelines are addressed within the main part of this PD. Clarifications, interpretations, review aids and other information are provided in Appendices A through D. This format will permit easier updating and additions, as enforcement experience provides more information regarding these areas.
1. Appendix A of this instruction provides clarifications of provisions of the standard where significant interpretations have been necessary to ensure uniform enforcement and understanding.
 2. Appendix B provides a sample letter for inquiries regarding missing or deficient MSDS and labels.
 3. Appendix C provides general guidelines for evaluation of hazards.
 4. Appendix D provides a guide for reviewing MSDS.
- G. Inspection Resources. Compliance safety officers (COs) and industrial Hygienists (IHs) shall evaluate employer compliance with the HCS during the course of all inspections. (See the Compliance Manual, Chapter III, D.7.a.2.)
1. Both safety and health inspectors shall evaluate employer compliance with the written program requirements, use of labels, availability of MSDS and appropriate training.
 2. Field inspectors of one discipline shall consult with those of the other when specific expertise is necessary to evaluate elements of the employer's program.
- H. Inspection Guidelines. The following guidelines apply to all inspections conducted to determine compliance with the HCS:
1. Inspection Guidance. The HCS incorporates both specification and performance requirements which are result-oriented, thereby providing goals for achievement and allowing employers the 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 judgment during compliance inspections. The standard itself, and the preamble accompanying it, are to be consulted for further guidance.
 2. Special Documentation. In addition to those items required by the Compliance Manual, when citations are recommended, the COs and IHs shall document the

following on the OSHA-1B or, as appropriate, elsewhere in the case file:

- a. Name of the chemical(s).
 - b. Name of the person preparing the hazard determination, written program, label, MSDS, etc. and for whom they work.
 - c. COs and IHs shall ensure that the number of employees who may be exposed (including potential exposure) to the chemical in the establishment is documented.
 - d. If a chemical manufacturer, importer, or distributor is inspected, indicate the name of a downstream employer who receives the chemical, including company name, address, and potential or actual downstream employee exposure.
 - e. Health and physical hazards.
 - f. If practical, include a photocopy or a photograph of inaccurate and/or any incomplete label(s)/MSDS in the case file. Otherwise document the specific deficiency in the case file. If the volume of inaccurate/incomplete MSDS cannot reasonably be included in the file, then a representative number should be documented, indexing those referenced in the citation.
3. Scope and Application - Paragraph (b). The HCS requires labels and MSDS to be transmitted from chemical manufacturers and importers to distributors to employees to employees. No barrier to this information flow is permitted.
- a. This paragraph outlines exemptions to full coverage of the standard. A complete exemption from all requirements of the HCS applies for only those items listed under (b)(5) and should not be confused with the labeling exemptions at (b)(4) which only apply when chemicals are subject to the labeling requirements of certain Federal agencies.
 - b. Laboratories and sealed containers are dealt with in a limited fashion as per paragraphs (b)(3) and (b)(4).
 - c. Inspection Guidelines. As explained in C of this PD, the HCS is fully enforceable in all industries.
 - (1) The Scope and Application paragraph (b) of the HCS requires "all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning,

material safety data sheets and information and training." (Emphasis added.)

- (2) The scope paragraph clearly states that the HCS applies to employers if they know hazardous chemicals are present in a manner that employees may be exposed, regardless of whether the employer has created the chemical exposure. The multi-employer worksite provisions of paragraph (e)(2) ensure that employers are able to obtain the information they need to be able to meet these obligations.
 - (3) In some cases, a hazardous chemical may be present for a long period of time without an employee exposure until repair or demolition activities are performed. By way of example, employers involved in work operations where jackhammers are being used to break up a sidewalk know that they are exposing their employees to a hazardous chemical (silica), even though they did not "bring" the hazard to the site. Even though other provisions of the standard may not be enforceable (MSDS and labels), the employer should still develop a hazard communication program to inform their employees "about the hazardous chemicals to which they are exposed." Employers may utilize their already existing hazard communication program to communicate information on these types of hazards to their employees, as per paragraph (e)(3).
4. Hazard Determination - Paragraph (d). Only chemical manufacturers and importers are required to perform hazard determinations on all chemicals they produce or import, although distributors and employers may choose to do so. Hazard determination procedures must be in writing and made available, upon request, to employees, the National Institute for Occupational Safety and Health (NIOSH), and state and federal OSHA. Appendix C is provided as a guide for use when assessing the hazard evaluation procedures.
- a. Inspection Guidelines. The adequacy of a company's hazard determination program can be assessed primarily by examining (or reviewing) 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. The chemical manufacturer, importer, employer or distributor performing the hazard determination (the preparer"), shall be asked to forward the written hazard determination procedures to the Director when they are not immediately available at the establishment. A reasonable time period, not exceeding five working days, shall be allowed for receipt in the Anchorage office.

- (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 State OSH's, and for documentation of appropriate violations.
- (2) In general, the hazard evaluation procedures should address the following:
 - (a) 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.
 - (b) Criteria to be used to evaluate the studies, including those parameters addressed by the HCS (i.e., statistical significance; whether or not the evaluation was conducted according to established scientific principles).
 - (c) A plan for reviewing information to update the MSDS if new and significant health information is found.
- (3) The hazard evaluation must include an assessment of both physical and health hazards. The chemical manufacturer or importer must consider the potential exposures that may occur when downstream employers use the product, and address the hazards that may result from that use on the labels and MSDS prepared for the product. It is important to note that employee "exposure" as defined by the HCS includes any route of entry (inhalation, ingestion, skin contact or absorption) and also includes potential (e.g., accidental or possible) exposure, including foreseeable emergencies. Only by considering all these factors can the chemical manufacturer or importer truly assess the hazards encountered during anticipated use of his product. The mere presence of a chemical in a product does not necessarily result in coverage; it must be available for exposure.
- (4) Evaluations with respect to carcinogen labeling and MSDS notations are addressed in those respective sections below as well as in Appendix A which also contains specific information on mineral oils.

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

(1) If the preparer 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.

(2) If the preparer has not developed an MSDS and no written procedures are available, then apparent violations of both paragraphs (d)(1) and (d)(6) exist and shall be recommended for citation. (Refer to H.7.b. of this PD for guidance.)

(3) Chemical manufacturers or importers are not required to test their products to evaluate their hazards. If a mixture has been tested, the resulting data would apply. If it has not been tested as a whole, the mixture is assumed to present the same hazards as its component parts. If the employer chooses to rely on upstream chemical manufacturers' hazard determinations for the component parts of his mixture, he may do so but must so specify in his written hazard determination procedures. MSDS for each of the component parts must be physically grouped together in order to meet the chemical manufacturer's hazard determination requirements. Certain information has to be provided for the mixture as a whole for the combined MSDS; e.g., identity, manufacturer's name, address, etc.

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 HCS obligates all employers who may expose their employees to hazardous chemicals to develop a written program, regardless of whether or not they introduced the hazard into the workplace.

a. Inspection Guidelines. Ideally, and if readily available, the written program should be reviewed first, prior to ascertaining whether the elements of the program have been implemented in the workplace.

(1) 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.

(2) In general, the written program should consider the following elements where applicable:

(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, where applicable.
- 5 Procedures to review and update label information when necessary.

(b) Material Safety Data Sheets.

- 1 Designation of person(s) responsible for obtaining/maintaining the MSDS.
- 2 How such sheets are to be maintained (e.g., in notebooks in the work area(s), via a computer terminal, in a pick-up truck at the jobsite, via telefax) and how employees obtain access to them.
- 3 Procedure to follow when the MSDS is not received at the time of the first shipment.
- 4 For chemical manufacturers or importers, procedures for updating the MSDS when new and significant health information is found.

(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 (h)).
- 4 Procedures to train new employees at the time of their initial assignment and to train employees when a new hazard is introduced into the workplace.
- 5 Procedures to train employees of new hazards they may be exposed to when working on or near another employer's worksite (i.e., hazards introduced by other employee).
- 6 Guidelines on training programs prepared by the Office of Training and Education entitled "Voluntary Training Guidelines" (Vol. 49 FR 30290, July 27, 1984) can be used to provide general information on what constitutes a good training program.

(d) Additional Topics to Be Reviewed.

- 1 Does a list of the hazardous chemicals exist and if so, is it compiled for each work area or for the entire worksite and kept in a central location?
- 2 Are methods the employer will use to inform employees of the hazards of non-routine tasks outlined?
- 3 Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work areas?
- 4 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?
- 5 For multi-employer workplaces, are the methods the employer will use to inform the

other employer(s) of the labeling system used described?

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

b. Citation Guidelines. Generally, all violations of paragraph (e) shall be grouped with the violated element(s) listed in the subparagraphs of (e) and/or violations of paragraphs (f), (g) and (i) as appropriate, since (e)(1) is the only provision under paragraph (e) which addresses the development, implementation and maintenance of the written hazard communication program. Specific citation guidance is given below:

- (1) Paragraph (e)(1) shall be cited by itself when no program exists (i.e., when no program has been developed). Paragraph (e)(1) shall also be cited in instances where the written program is not maintained at a fixed worksite location. For certain mobile or multi-employer worksite situations, see guidance given in Appendix A, Section (e)(2), discussion beginning on page A-15.
- (2) When an employer's written program exists but is found to be deficient (i.e., has not been implemented as witnessed by the inadequacies of the other requirements of the standard), paragraph (e)(1) shall be cited and grouped as separate violations with separate penalties with the elements of the standard required in subparagraphs of (e) and/or paragraphs of (f), (g), and/or (i). An example follows: An employer has developed a written program but it has not been implemented in the workplace--no training has been provided and MSDSs are not available to employees. (e)(1) grouped with (h) as a separate violation and penalty and (e)(1) grouped with (g)(8) as a second violation with separate appropriate penalty.
- (3) Paragraph (e)(1) shall also be cited when an employer has not developed a written program and yet is exposing his employees to chemical hazards which are known to be present in the workplace and which are created by another employer.
- (4) Alaska OSH's compliance and enforcement policies for multi-employer worksites are set forth in the Compliance Manual, Chapter V, Sections F.1 and 2., which state that with regard to working conditions where employees of more than one employer are exposed to a hazard, the employers "with the responsibility for creating and/or correcting the hazard" shall be cited for violations of OSH

standards that occur on a multi-employer worksite. In these situations, normally citations for violations shall be issued to each of the exposing employers as well as to the employer responsible for correcting or ensuring the correction of the condition (which is usually the controlling employer or general contractor).

6. Labels and Other Forms of Warning, Paragraph (f). Labels or other markings on each container of chemicals must include the identity and appropriate hazard warnings. Labels on shipped containers must also include the name and address of the chemical manufacturer, importer, or other responsible party.
- a. Inspection Guidelines. COs and IHs shall determine that containers are labeled, that the labels are legible, and that the labels are prominently displayed.
- (1) Labels must be in English. Labels and MSDS may also be printed in additional languages.
 - (2) The accuracy of the label information is to be assessed for a representative number of chemicals. The CO or IH shall determine whether the label identity can be cross-referenced with the MSDS and the list of hazardous chemicals.
 - (3) COs or IHs must consider alternate labeling provisions (for example tags or markings) for containers which are too small to accommodate a legible label.
 - (4) COs and IHs shall evaluate the effectiveness of inplant labeling systems through a review of the employer's training program and MSDS procedures. Such evaluation shall include interviews with employees to determine their familiarity with the hazards associated with chemicals in their workplace. An effective program is one that ensures that employees are aware of the hazardous effects (including target organ effects) of the chemicals to which they are potentially exposed.
 - (5) Guidelines for referrals regarding inadequate labels are dealt with in this PD at H.7.(7) and (8).
- b. Citation Guidelines. Chemical manufacturers shall be cited for appropriate paragraphs (f)(1)(C) of the standard 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/or used only inhouse. (See also H.7.b.)

7. Material Safety Data Sheets, Paragraph (g). The standard requires chemical manufacturers and importers to develop or obtain a material safety data sheet for each hazardous chemical they produce or import.

a. Inspection Guidelines. Distributors and employers may, at their option, develop MSDSs. COs and IHs should inform them as well as chemical manufacturers and importers that the Material Safety Data Sheet, OSHA Form 174, is available for this purpose. The CO or IH shall evaluate the compliance status of this provision by examining a sample of MSDS to determine that the MSDSs has been obtained or developed and prepared in accordance with the requirements of paragraphs (g)(2) - (5) of the standard and to ensure that the information regarding the health and physical hazards is technically accurate. If MSDSs are not updated when new information becomes available, the hazard determination performed by the chemical manufacturer or importer is deficient.

(1) 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.

(2) The CO or IH is to complete this review by following the procedures outlined in Hazard Evaluation Procedures, Appendix C of this PD. The CO or IH shall also use available literature and computer references in the Anchorage office as well as Appendix D, Guide to Reviewing MSDS Completeness, in reviewing MSDS.

NOTE: Published MSDS reference files are copyrighted, and, therefore, must **NOT** be copied for distribution to the public.

(3) In addition, the State has access to physical and health hazard data on the federal OSHA Computerized Information System (OCIS). If the hazard information is not available or cannot be obtained in the state, then the director will contact the OSHA Regional Administrator for assistance.

- (4) Published MSDSs, if used, are a screening resource for the CO or IH. The information on these MSDSs has not been evaluated by OSHA to determine if it is accurate or required in every situation. They should be used to help identify which areas require further research or where information is lacking on the MSDS being reviewed.
- (5) The following items shall be considered when reviewing the MSDSs:
 - (a) Do employers have an MSDS for each hazardous chemical used?
 - (b) Does each MSDS contain information which adequately addresses at least the 12 elements required by the standard at (g)(2)(A) - (L)?
- (6) The CO or IH shall ensure compliance with the MSDS transmission provisions of the standard by reviewing the chemical manufacturer's, importer's, or distributor's program for transmitting the MSDS and updated MSDS to downstream customers.
- (7) Referral Procedures Where an Employer's MSDS/Label is Inadequate or Deficient. Where employers are relying on the MSDS/label supplied by chemical manufacturers or importers, the following procedures apply:
 - (a) Employers are not to be held responsible for inaccurate information on the MSD/label which they did not prepare and they have accepted in good faith from the chemical manufacturer, importer or distributor.
 - (b) The CO or IH shall take copies of the MSDS/label with inaccurate information back to the Anchorage office for referral to the appropriate State Plan State or OSHA Office. Before making the referral, the Chief, Compliance shall write to the supplier requesting action in 30 days or less using the sample letter in Appendix B of this instruction. As an option, the Chief, Compliance may call the supplier, but if a prompt response is not received a letter shall be sent. This may be done even if the supplier is outside the jurisdictional area of the State.
 - (c) 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.

- (d) 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.
- (e) 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.

- (f) If OSHA or a State Plan State refers a complaint that a supplier or manufacturer in Alaska has refused to provide MSDSs/labels, the Chief, Compliance 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.

- (8) Referral Procedures for Distributors. When a distributor has not received an MSDS from the supplier, the CO or IH shall recommend that the distributor write to the chemical manufacturer, and, if applicable, other distributor who supplied the chemical. If at the end of the abatement period, the distributor has failed to receive the MSDS, the Chief, Compliance shall follow the referral procedures outlined in H.7.a.(7)(b) through (f) of this PD.
- b. Citation Guidelines. Citations shall be issued to the employer only when MSDS/labels are missing.
- (1) If MSDS/labels are missing or have not been received for a hazardous chemical(s), the employer shall be cited unless a good faith effort has been made to obtain the information.
 - (a) A copy of a letter or documentation of a phone call to the supplier are examples of methods for establishing a good faith effort. An employer contacting Alaska OSH for assistance in obtaining the missing information is also an excellent example of a good faith effort.
 - (b) The Chief, Compliance should expect to receive requests from employers to assist them in obtaining MSDSs or labels in situations when an inspection has not been conducted. Such requests should be referred to the Consultation and Training Unit which maintains a library of MSDSs. The unit also has developed a procedure for requesting MSDSs for chemicals and products for which there are none available in their library.
 - (c) If a citation will be issued to the employer for lack of a MSDS/label, where the employer has failed to document that a good faith effort has been made to obtain them, COs and IHs shall recommend that the employer write to both the direct supplier and to the manufacturer for the MSDS or label.
 - 1 COs and IHs shall inform employers that it is their responsibility to contact Alaska OSH before the expiration of the abatement date to request a petition to modify abatement or else be subject to a failure

to abate if abatement is not accomplished. If at the end of the abatement period the employer still has failed to receive the requested information, the Chief shall call and/or send a certified letter to the manufacturer, importer, or distributor to obtain the required information. (See sample letter in Appendix B.)

2 If the distributor failed to transmit the MSDS to the employer, the distributor shall be cited for violation of paragraph (g)(7) of the standard with a short abatement date unless the distributor did not receive the MSDS from the chemical manufacturer, importer, or distributor. In such cases the abatement period will generally be 30 days.

(2) Any party who changes the label/MSDS (for example, changing the name or identity of the chemical) then becomes the responsible party for the change regardless of whether they are a chemical manufacturer, distributor or user employer. In cases where a distributor adds its name to the MSDS and those MSDSs are inaccurate or incomplete, citations shall not be issued to the distributor. Distributors, however, who substitute their names on the MSDS or change it in any way become the "responsible party" and 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) of the standard if noted upon inspection.

(3) On multi-employer worksites, citations for violations of (g)(8) of the standard shall be issued to the employer responsible for providing or making the MSDS(s) available, as discussed below. A citation for violation of (e)(2) of the standard shall concurrently be issued in any of the instances listed where there is evidence that an employer has failed to effectively implement and enforce its hazard communication program.

(a) If an employer on a multi-employer worksite brings hazardous chemicals onto that site and fails to inform other employers about the presence of those chemicals and/or the availability of the MSDS(s), that employer

shall be cited for violation of (g)(8) grouped with (e)(2).

(b) Central Location. If the employer's method to provide other employers with MSDS(s) involves the use of a central location, and the MSDS(s) is not available at that location, then the employer shall be cited for violation of (g)(8).

(c) Controlling Employer. If the employer's method involves using a general contractor or other employer as an intermediary for storage of the MSDS(s), and that intermediary employer has agreed to hold and provide ready access to the MSDS(s), then that other employer becomes the controlling employer, who is then responsible for ensuring the availability of the MSDS(s).

1 The controlling employer (e.g., general contractor) shall therefor normally be cited for violation of (g)(8) if the MSDS(s) is not available; however:

2 If the MSDS(s) is not available because the subcontractor failed to provide it, then the subcontractor shall instead be cited for violation of (g)(8).

(4) The Compliance Manual discusses penalty factors for shipped containers at Chapter IV, Section C.8.

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

a. Inspection Guidelines. 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.).

(1) COs and IHs shall continue to ensure that employers' obligations under specific training provisions of other standards are met. There will also be instances where there is an overlap in the training requirements of ACC 05.030(c), Safety Training and Education, and the HCS. In those instances where the training deficiency is covered by both

standards the CO or IH shall issue a citation for 15.010(i), which is the more specific standard.

- (2) Training programs must be evaluated through program review and discussion with management and employees. All elements of training and information stated in the standard must be addressed. The following additional questions provide a general outline of topics to be reviewed:
 - (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 a new hazard is introduced into work areas?
 - (c) Have all new employees at this location received training equivalent to the required initial assignment training?
 - (d) Was training subject matter organized by:
 - 1 Specific chemical?
 - 2 Categories of hazard?
- (3) The Voluntary Training Guidelines (Vol. 49 FR 30290, July 27, 1984) may also be helpful in assessing the effectiveness of the employer's training program.
- (4) Employee 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 of what hazards they are exposed to, 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 the

transmission of hazard information. This can occur only if employees receive the information in usable form through appropriate training.

- (5) Paragraph (i) requires that information and training be provided to employees regarding the hazards of all chemicals in their work areas including by-products and hazardous chemicals introduced by another employer, provided that they are known to be present in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.
- (6) Some employers will voluntarily keep records of training sessions. These could be helpful to COs and IHs in assessing compliance with the standard.
- (7) Employers are required to ensure that training is provided. Employees may be trained by unions, in trade school, etc. The employer is responsible for ensuring they have been properly trained. If outside training sessions are used to satisfy this requirement, and the CO or IH determines that the employee has not been adequately trained, the employer is subject to citation.

b. Citation Guidelines. Citations shall be issued under paragraph (i) of the standard when training is found to be inadequate through program review, discussion with management and employee interviews. The employer is always ultimately responsible for ensuring that employees are adequately trained, regardless of the method relied upon to comply with the training requirements.

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. Inspection Guidelines. COs and IHs evaluating the MSDS and hazard determination programs may request disclosure of trade secret identities under paragraph (j)(12) of the HCS. Alaska OSH shall take all steps feasible to protect trade secret identities, including secure filing and return of information when its use is complete.

- b. Citation Guidelines. Where Alaska OSH believes that the chemical manufacturer, importer or employer will not be able to support the trade secret claim, the withholding of a specific chemical identity shall be cited as a violation of paragraph (g)(2). 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 grouped with 1910.1200(g)(2), stating the deficiency in the AVD. 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).
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.
- a. Inspection Guidelines. Referrals received from treating physicians and nurses relating to a medical emergency shall normally be classified as imminent danger or serious in accordance with the Compliance Manual, Chapter IX. Due to the potential risk to life and/or health, the Chief, Compliance shall ensure that these referrals are processed as soon as received. The Chief, Compliance 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 immediately provide the needed information directly to the treating physician or nurse.
 - b. Citation Guidelines. 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 or federal OSHA jurisdiction. Apparent violations shall be referred to the office of jurisdiction for investigation and the issuance of citations. (See Paragraph H.7)
11. Response to Nonemergency Referrals. When health professionals providing medical or other occupational health services to exposed employees, or when employees themselves and/or their 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, Compliance 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, Compliance 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 V, C., shall be followed except as modified by this PD; however, if deviations appear appropriate, they shall be coordinated with the Director. The following guidelines normally shall apply:

- 1. Citations for violations of paragraphs (e), (f), (g), and (i) of the standard shall be issued as separate items when there is a complete lack of a hazard communication program. Otherwise the guidance provided in the Compliance Manual or specific guidance in this PD shall be followed.
- 2. Serious violations shall be issued whenever a deficiency in the program can contribute to a potential exposure capable of causing death or serious physical harm. In addition, the CO or IH must document that the employer knew or should have known of the violation.
 - a. Serious violations should be considered only when there is documentation which demonstrates that the employer or downstream employer is using the chemical in a manner which could result in actual or potential exposure capable of producing death or serious physical harm. The lack of a label or the lack of a training program alone for a specific chemical or type of hazard could result in a situation where exposure to that hazardous chemical without these safeguards of the HCS would create a serious hazard.
 - b. Documentation of a HCS violation for a chemical manufacturer or importer could be in the form of a referral generated as a result of Alaska OSH's observation of conditions of use resulting in employee exposure to the hazardous chemical at a downstream user's workplace.
- 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 Statutes.

- 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(i)(2)).

J. Interface With Other Standards. In some cases, an employer's duties under Alaska OSH standards dovetail with requirements of the HCS, resulting in simplified compliance.

1. Medical Records Access. The Access to Employee Exposure and Medical Records standard 8 AAC 61.270 and the HCS overlap with regard to MSDSs. MSDSs are specifically identified as exposure records. Each MSDS received by an employer must be maintained for at least 30 years as required at 8 AAC 61.260(b)(7). The access standard does offer an alternative to keeping the MSDSs at 8 AAC 61.260(b)(7), which reads as follows:

"Material safety data sheets, except those that must be kept for chemicals currently in use that are affected by the Hazard Communication Standard, 8 AAC 61.0101, Subchapter 15, and records concerning the identity of a substance or agent need not be retained if 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."

Therefore, an employer may discard the original data sheet and retain only the new data if a record of the original formulation is maintained.

- a. Paragraph (e)(2)(A) of the HCS 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 61.260(b)(7) with those for the HCS (e)(2)(A). That is, the list of hazardous chemicals could include information on where chemicals were used and when they were

used. These lists would then have to be kept for at least 30 years.

- c. Section (e)(4) of the HCS requires employers to make the written hazard communication program available upon request to employees, their representatives, Alaska OSH or NIOSH, in accordance with the requirements at 8 AAC 61.270. The regulation 8 AAC 61.270 requires the employer to provide a copy of the requested record (in this case, a copy of the written hazard communication program) "in a reasonable time...but in no event later than fifteen (15) days..." Some employers have incorrectly interpreted this to mean that they have 15 days to produce a copy of the written program and make it available at the worksite. This is an incorrect interpretation; the intent behind the (e)(4) requirements of the HCS is to allow the employer up to 15 days to provide a written (photo or other) copy of the program to employees who request it. This does not mean the employer has 15 days in which to get the program to the worksite for employees to access. The written program must be available to employees at the worksite at all times, as per 15.0101(e)(1). (See Appendix A, discussion at (e)(2), page A-15.

2. Air Contaminants. Alaska OSH's enforcement of the new Air Contaminants rule was effective August 8, 1990.

Chemical manufacturers, importers, distributors or employers who prepare MSDSs were responsible for incorporating the changes precipitated by the new standards within three (3) months. Therefore, all MSDS and labels must already have been modified if affected by this rulemaking and such modifications of both PEL (including STEL and skin notations) and health hazard data must now appear on the revised MSDS and labels, as appropriate.

3. 04.0308, Occupational Exposure to Hazardous Chemicals in Laboratories. Quality control laboratories are usually adjuncts of production operations and are not covered under the Laboratory Standard, but rather would be covered under the HCS. For other laboratories covered under the Laboratory Standard, the requirements of the HCS are superseded (the more specific standard, 04.0308, takes precedence). Both the training and information and the hazard identification requirements of the Laboratory Standard are more extensive than the HCS laboratory requirements.
4. Other Health Standards. Paragraph (f)(3) of the HCS references labeling requirements of substance-specific standards. Employers must comply with these substance specific standards. 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 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.
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 instruction shall be conducted annually. The Chief shall prepare the evaluation

report for the Director with 30 days of the close of the fiscal year.

1. Are enforcement and citation policies clear?
2. Are particular problems not addressed or inadequately addressed in this instruction?