Hazard Communication, the Minnesota Employee Right to Know Act, and the Global Harmonization System

This fact sheet explains the roles of the Federal Hazard Communication standard, the Minnesota Employee Right to Know Act, and the Global Harmonization System, and the ways they relate, now and in the future.

Introduction

The three regulations discussed in this fact sheet all share a common goal; to ensure that workplace health hazards are classified and communicated to employees in a consistent, understandable way.

Description of the three regulations

- The Federal Hazard Communication standard (“Haz. Comm.” or “HCS”) requires employers with employees who are exposed to hazardous chemicals (such as pesticides, fuels, solvents, corrosives, etc.) to develop formal, written programs to ensure that employees are advised of those hazards through chemical labeling, training, and Safety Data Sheets (formerly known as Material Safety Data Sheets). As of the creation date of this fact sheet, Haz. Comm. does not apply in Minnesota, but this is about to change. This is discussed later in this fact sheet.

- The Minnesota Employee Right to Know Act (“MERTKA”) is nearly identical to Haz. Comm., with the main difference being that it also covers exposures to harmful physical agents including heat, noise, ionizing and non-ionizing radiation, and infectious agents like Hepatitis, HIV, tetanus, rabies, etc. It currently applies in Minnesota.

- The Global Harmonization System (GHS) is a recent international standard that addresses how chemical hazards are classified and communicated via standard chemical labels and “Safety Data Sheets”. GHS requirements have recently been “woven into the fabric” of the Hazard Communication Rule by Federal OSHA, but again, at the current time, Haz. Comm. does not apply in Minnesota.

Exceptions

Both MERTKA and Haz. Comm. have several notable exceptions. Perhaps most notably, laboratory employees are covered by OSHA’s lab safety standard (29 CFR 1910.1450), and not these regulations.

There are also some exceptions for agricultural workers and other industries.

The history and future of MERTKA
Because it covers more hazards (physical agents and infectious agents) and has more stringent training requirements, MERTKA is considered more protective than its Federal counterpart Haz. Comm. For this reason, Minnesota OSHA has enforced MERTKA, and not Haz. Comm for over 30 years.

However, when Haz. Comm. was modified by Federal OSHA to include GHS requirements, Minnesota OSHA was legally required to either modify MERTKA in the same way, or to adopt Haz. Comm. They chose to adopt the Haz. Comm rule.

**Therefore, Minnesota OSHA will soon begin to enforce the Federal Hazard Communication regulation instead of MERTKA.** The shift in OSHA’s enforcement policy will take place over several years, but will be complete by July 1, 2016. Until then, employers may comply with either regulation.

**Some components of MERTKA remain in effect**

There will be a few exceptions to the shift from MERTKA to Haz. Comm.:

- Since Haz. Comm. specifically exempts harmful physical agents (such as heat, noise and radiation), and infectious agents, Minnesota OSHA will continue to enforce MERTKA for those exposures. In other words, if employees are exposed to hazardous substances and physical agents/infectious agents, then the employer will be required to have a Haz. Comm. program AND a MERTKA program.
- Also, Haz. Comm. does not require annual retraining of employees as MERTKA does, but MNOSHA will continue to require this.

**Impact on the University and departments**

While there will be minor changes in the scope, application and definitions between MERTKA and Haz. Comm., the fundamental requirements remains the same. Therefore, the impact of this change will be minimal.

**Fundamental requirements of both rules**

Employers must evaluate their workplaces to determine if employees are exposed or potentially exposed to hazardous substances (chemicals), harmful physical agents, such as heat, noise or radiation (either ionizing or non-ionizing), or infectious agents, under routine conditions or reasonably foreseeable emergencies. If so, the employer must:

(1) Develop a written listing of the exposures that are known to be present. Exposure above any type of Occupational Exposure Limit such as a PEL or TLV is not necessary for inclusion on the list of hazards.

Compiling this list will require careful consideration and evaluation of the work area. Many hazards will **not** be immediately obvious. For example:

- Carbon monoxide from forklifts and other such equipment.
- Diesel exhaust from diesel equipment.
- Welding fumes and other byproducts from welding operations.
- Wood dust from wood working operations.
- Heat, insect bites, and poisonous plants if employees work outdoors.
• Methane, hydrogen sulfide, and other gases potentially encountered by employees who work in confined spaces.

(2) Develop a written program, with content that complies with Haz. Comm. and/or MERTKA. A program template is available from the Office of Occupational Health and Safety (uohs@umn.edu)

(3) Each employee covered by the program must receive training on the hazards to which they are, or may be exposed.

Training must be specific to the hazards. For instance employees who are exposed to corrosives must be trained on the hazards, and safe handling of corrosives.

In general, training must be provided:

• Before an employee’s initial assignment to a workplace where exposure may occur.
• Before any new or additional hazardous substance or agent is introduced into the workplace.
• At least annually thereafter. This training may be a brief summary of information included in initial and/or previous training sessions. Remember, the Federal Hazard Communication rule does not require annual retraining, but Minnesota OSHA will require it regardless.

All training must be adequately documented and records must be retained for three years.

For several reasons, locations are advised to contact DEHS and/or OHS for assistance with planning and conducting MERTKA training. This type of training is quite technical and lengthy, and will require some degree of trainer credibility.

(4) A current Safety Data Sheet (SDS)/Material Safety Data Sheet (MSDS) must be maintained for every hazardous substance present in the workplace, with certain exceptions.

Any such document produced after June 1, 2015 must be called a “Safety Data Sheet” and must comply with GHS requirements for content and format.

(5) All hazardous substances must be kept in properly labeled containers. Labeling and signage requirements for physical areas where employees might be exposed to harmful physical agents also apply.

Original shipping containers shipped after December 1, 2015 must be in compliance with GHS labeling requirements. However, chemicals in the workplace may use either GHS labeling, or an alternative method that provides at least basic information on hazards.

Immediate use containers (test tubes, beakers, graduates, vials, pitchers, pails, or similar containers that are routinely used and reused) do not have to be labeled if:

• They are used only to transfer a hazardous substance from a labeled container.
• They remain under the control of the person who transferred the substance.
• They are only used during the work shift in which the transfer takes place.

Questions
If you have questions on this topic, please contact University Health and Safety at (612)626-6002.