

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
POLICY AND PROCEDURES MANUAL**

# HAZARD COMMUNICATION

P&amp;P C-43

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Revised: 8/1/94, 7/1/95

**AUTHORITY:** California Labor Code §6360 through 6399.7 and Title 8 California Code of Regulations §§5191 and 5194.

**POLICY:** It is the policy of the Division of Occupational Safety and Health to ensure that compliance personnel evaluate the provisions of the Hazard Communication Standard during the course of every workplace inspection.

**PROCEDURES:**

**A. FIELD OPERATIONS RESPONSIBILITIES**

1. During the course of every investigation or inspection, compliance personnel shall evaluate a manufacturer, importer, employer or distributor's compliance with the provisions of the Hazard Communication Standard (8 CCR §5194).
2. If compliance personnel require any assistance in evaluating compliance with §5194, compliance personnel shall consult with the District Manager or the Regional Senior Industrial Hygienist, or shall make a referral to the Research and Standards Unit in Division Headquarters. See P&P C-90.

**B. HEADQUARTERS RESPONSIBILITIES**

The Research and Standards Unit shall evaluate applications for trade secret status with the assistance of the Legal Unit, and assist compliance personnel with informational requests about Material Safety Data Sheets (MSDSs) from out-of-state manufacturers, importers, employers or distributors.

**C. EMPLOYER, MANUFACTURER, IMPORTER AND DISTRIBUTOR RESPONSIBILITIES**

1. Proposition 65 Requirements for Employers, §5194(b)(6)
  - a. Proposition 65 Warning

§5194(b)(6) requires all covered employers to provide a warning about the hazards of any substance included in Title 22 California Code of Regulations §12000 (Safe Drinking Water and Toxic Enforcement Act of 1986) which is present in the employer's establishment.

NOTE: A covered employer may comply with §5194(b)(6) by including the Proposition 65 substance in the employer's Hazard Communication Program (HCP).

- b. Citation

A covered employer who knowingly and intentionally fails to provide a required Proposition 65 warning shall be cited for a violation of §5194(b)(6)(C).

**EXCEPTION:** The following employers are not covered by the Proposition 65 warning requirement found in §5194(b)(6): (1) an employer employing fewer than ten (10) employees; (2) any city, county or district or any department or agency thereof, or the state or any department or agency thereof, or the federal government or any department or agency thereof; or (3) any entity in operation of a public water system as defined in Health & Safety Code §4010.1.

## 2. Hazard Determination, §5194(d)

### a. Manufacturers and Importers

#### 1. Evaluation

When inspecting a manufacturer or importer, compliance personnel shall determine if the manufacturer or importer has complied with all the requirements of §5194(d)(2) through (6) when evaluating substances produced in their workplaces or imported by them to determine if they are hazardous.

#### 2. Citation

- a. If the manufacturer or importer has not performed a required hazard determination, compliance personnel shall cite §5194(d)(1).
- b. If the manufacturer or importer has not complied with all the requirements of §5194(d)(2) through (6), compliance personnel shall cite the appropriate subsection.
- c. If required hazard determination is deficient in terms of health or physical hazards, compliance personnel shall cite §5194, Appendix B.
- d. If required hazard determination procedures are not in writing, compliance personnel shall cite §5194(d)(6).

### b. Employers

#### 1. Evaluation

- a. Unless an employer chooses not to rely on the evaluation of a hazardous substance made by the manufacturer or importer, employers are not required to evaluate hazardous substances which are used in their workplace.
- b. If an employer chooses to evaluate a hazardous substance, compliance personnel shall determine if the employer has complied with the requirements of §5194(d)(2) through (6).

#### 2. Citation

See Section C.2.a.(2)

3. Written Hazard Communication Program (HCP), §5194(e)

a. Evaluation of Program Effectiveness

1. Compliance personnel shall evaluate the employer's HCP to determine if the employer has developed, implemented and maintained a written hazard communication program describing how the criteria in §5194(f)(for labels and other forms of warning), in (g)(for material safety data sheets), and in (h)(for employee information and training) will be met including:
  - a. A list of hazardous substances known to be present in the workplace; and
  - b. Methods to inform employees of the hazards of non-routine tasks.
2. Compliance personnel shall determine if the employer has made the written hazard communication program available according to the requirements of §5194(e)(3) and §3204(e).

b. Citation

1. If the employer has no written HCP, compliance personnel shall cite §5194(e)(1).
2. If the employer has a written HCP, but it does not adequately describe labels and other forms of warning, material safety data sheets and employee information and training, compliance personnel shall cite §5194(e)(1) with a reference to the appropriate subsection(s) of §5194(f), (g) or (h).
3. If the employer has failed to develop a hazardous substance list, or the list is inadequate, compliance personnel shall cite §5194(e)(1)(A).
4. If the employer has failed to describe methods to inform employees of the hazards of non- routine tasks, e.g., the cleaning of reactor vessels, and the hazards associated with substances contained in unlabeled pipes in their work areas, compliance personnel shall cite §5194(e)(1)(B).

4. Labels and Other Forms of Warning, §5194(f)

a. Labeling Containers Leaving the Workplace of a Manufacturer, Importer or Distributor

1. Compliance personnel shall determine if a representative number of containers of hazardous substances leaving a manufacturer's, importer's or distributor's workplace is labeled, tagged or marked with:
  - a. The identity of the hazardous substance(s) which accurately provides product identity information;
  - b. Appropriate hazard warnings; and

- c. Name and address of the manufacturer, importer or other responsible party.

NOTE: Labeling shall not conflict with the requirements of the Hazardous Materials Transportation Act and regulations issued under that Act by the U.S. Department of Transportation, §5194(f)(2).

2. If deficiencies are noted in the labeling of containers leaving a manufacturer's, importer's or distributor's workplace, compliance personnel shall cite appropriate subsections of §5194(f)(1)(A), (B) or (C), or (f)(2).

EXCEPTION: Compliance personnel shall be aware of the exception to the requirement to label every container covering solid metals, e.g., a steel beam or a metal casting not exempted as an article. See Exception to (f)(1).

- b. Substance-Specific Health Standard Compliance

If a particular hazardous substance is regulated by a substance-specific health standard, compliance personnel shall determine if the manufacturer, importer, distributor or employer has complied with any labeling or warnings requirements specified in the substance-specific health standard.

- c. Employer's Labeling Requirements

1. Compliance personnel shall evaluate a representative number of containers of hazardous substances to ensure that the employer has properly labeled, tagged or marked containers with:
  - a. The identify of the hazardous substance in the container, §5194(f)(4)(A); and
  - b. Appropriate hazard warnings, §5194(f)(4)(B).

NOTE: If compliance personnel note a deficient label on an in-house container of a hazardous substance, compliance personnel shall cite §5194(f)(4)(A) or (B), as appropriate.

2. Compliance personnel shall also evaluate a representative number of containers of hazardous substances to determine if labels or other forms of warning are legible, in English and prominently displayed on the container, or readily available in the work area throughout each shift, §5194(f)(8).
3. Compliance personnel shall also assess if the product identity and hazard warning information are consistent with the MSDS and employer's inventory list for that hazardous substance.

NOTE: Employers are not responsible for inaccurate labels accepted in good faith from the manufacturer.

- d. Label Removal or Defacement, §5194(f)(7)

If compliance personnel acquire evidence from employee interviews that the employer has

removed or intentionally defaced existing labels on incoming containers of hazardous substances and has not immediately relabeled the container with the required information, compliance personnel shall cite the employer for a violation of §5194(f)(7).

e. Employer Labeling Exceptions

1. Written Materials in Lieu of Labels, §5194(f)(5)

Employers can use written materials such as signs, placards, process sheets, batch tickets, operating procedures or other written materials in lieu of affixing labels as long as the alternative method identifies the containers to which it is applicable and conveys the information required by §5194(f)(4).

2. Immediate Use/Portable Containers, §5194(f)(6)

- a. Employer is not required to label portable containers into which hazardous substances are transferred from labeled containers and which are intended for the immediate use of the employee who performed the transfer.
- b. On construction sites, employers are not required to label portable containers into which hazardous substances are transferred from labeled containers so long as the containers stays on the job site or the employer uses written materials in compliance with §5194(f)(5).

f. Carcinogens

Compliance personnel shall consult the sources found in §5194(d)(4), (g)(2)(G) or in Appendices A, B and C for identification of carcinogens and potential carcinogens when determining whether a hazardous substance requires a warning on the label as a carcinogen or potential carcinogen.

5. Material Safety Data Sheets, §5194(g)

a. General Requirements

1. Compliance personnel shall determine if manufacturers and importers have obtained or developed a Material Safety Data Sheet (MSDS) for each hazardous substance they produce or import, §5194(g)(1).
2. Compliance personnel shall determine if employers have a MSDS for each hazardous substance which they use, §5194(g)(1).
3. Compliance personnel shall determine if distributors have ensured that MSDSs, and updated information, is provided to other distributors and purchasers, §5194(g)(8).

NOTE: If a MSDS is missing or inadequate, compliance personnel shall cite §5194(g)(1), unless evidence exists that the employer has not received an adequate MSDS.

b. Maintenance and Workplace Access

Compliance personnel shall review a representative sample of the employer's MSDSs to determine:

1. If the manufacturer or importer has obtained or developed, or if an employer has obtained, a MSDS for each hazardous substance used in the employer's workplace, §5194(g)(1);
2. If the employer has maintained a copy of the required MSDSs in the workplace and that the employer has made the MSDSs readily accessible to employees during each work shift when they are in their work areas, §5194(g)(8); and

NOTE: When employees must travel between workplaces during a workshift, the employer can keep MSDSs at a central location at the primary work facility but shall ensure emergency access to the MSDS. If an employer chooses to keep MSDSs at a central location, compliance personnel shall determine if the employer has procedures to ensure immediate access to the required information in an emergency.

3. If the employer has made MSDSs readily available to employees and designated representatives, upon request, §5194(g)(11).

NOTE: If an employer has not responded to an employee's request to review an MSDS, compliance personnel shall cite the employer for a violation of §5194(g)(11).

c. Language and Content

Compliance personnel shall review a representative sample of the manufacturer's, importer's or employer's MSDSs to determine:

1. If the MSDS is in English, §5194(g)(2); and
2. If the MSDS contains the required information specified in §5194(g)(2)(A) through (M), and in subsections (3) through (5).

NOTE ONE: California Labor Code §6392 states "Provision of a federal Material Safety Data Sheet or equivalent shall constitute prima facie proof of compliance with Section 6390." Therefore, CAS (Chemical Abstract Service) numbers can only be required for substances manufactured in California.

NOTE TWO: Compliance personnel should be aware that the control measures listed on many MSDSs are designed to protect the manufacturer against liability. However, compliance personnel should evaluate the adequacy of each MSDS based on actual employee exposure.

d. Providing MSDSs

1. Manufacturers/Importers' Duties

- a. (a) Compliance personnel shall evaluate if manufacturers and importers have

procedures in place to ensure that distributors and purchasers of hazardous substances are provided an appropriate MSDS with their initial shipment and with the first shipment after the MSDS is updated, §5194(g)(6).

NOTE: Pesticide manufacturers are required to prepare and provide an MSDS for pesticides labeled pursuant to the Federal Insecticide, Fungicide, Rodenticide Act (7 U.S.C. §136 et seq.).

- b. (b) Compliance personnel shall determine if any evidence exists that a manufacturer or importer failed to provide an MSDS to an employer when requested to do so by the employer. If so, compliance personnel shall refer an employer's failure to provide an MSDS to the Regional Manager in which the manufacturer/importer is located or to the Legal Unit for appropriate evaluation.
2. Employer Duty to Obtain MSDS Required by (g)(1), or Information Required by (g)(2)
    - a. Compliance personnel shall evaluate whether the employer has complied with the requirements of §5194(g)(12)(A) through (D) if a MSDS, or any item or information required by subsection (g)(2), has not been provided by the manufacturer or importer.
    - b. If the employer has not received an adequate MSDS for any substance which they use, compliance personnel shall cite §5194(g)(1), unless the employer has made a good faith attempt to obtain the missing MSDS.

NOTE: Good faith can be demonstrated by the employer by showing compliance personnel a written inquiry from the employer to the manufacturer requesting an MSDS sent within seven (7) days of receiving the hazardous substance, §5194(f)(12)(A). If no response was received within twenty-five (25) days of sending the inquiry, the employer must give notice to the Director. See §5194(f)(12)(D).

#### f. Carcinogens

Compliance personnel shall consult the sources found in §5194(d)(4), (g)(2)(G) or in Appendices A, B and C for identification of carcinogens and potential carcinogens when determining whether a hazardous substance requires a warning on the MSDS as a carcinogen or potential carcinogen.

### 6. Employee Information and Training

#### a. Evaluation

Compliance personnel shall evaluate the effectiveness of an employer's training program by reviewing the employer's training records and by interviewing employees and employee representatives.

b. Employee Interviews

1. Are employees provided with information and training on hazardous substances in their work areas at the time of initial assignment and whenever a new hazard is introduced into their work area, §5194(h)(1)?
2. Are employees informed of the requirements of the Hazard Communication Standard, §5194(h)(2)(A)?
3. Are employees informed of any operations in their work area where hazardous substances are present, §5194(h)(2)(B)?
4. Are employees informed of the location and availability of the employer's written Hazard Communication Program, including the list of hazardous substances and MSDSs, §5194(h)(2)(C)?
5. Are employees trained in the methods and observations that may be used to detect the presence or release of a hazardous substance in the work area, e.g., monitoring conducted by the employer, monitoring devices, visual appearance or odor of hazardous substances, §5194(h)(2)(D)?
6. Are employees trained in the physical and health hazards of the substances in the work area, and the measures they can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure, e.g., appropriate work practices, emergency procedures including personal protective equipment, §5194(h)(2)(E)?
7. Are employees trained in the details of the HCP, including an explanation of the labeling system and the MSDSs and how employees can obtain the appropriate hazard information, §5194(h)(2)(F)?
8. Are employees informed of their right:
  - a. To personally receive information regarding hazardous substances to which they may be exposed, §5194(h)(2)(G)1.?
  - b. To have their physician or collective bargaining agent received information regarding hazardous substances to which they may be exposed, §5194(h)(2)(G)2.?
  - c. Not to be discharged or be discriminated against due to their exercise of the rights provided by Labor Code §§6360 through 6399.7.

c. Updated Information, §5194(h)(3)

Compliance personnel shall evaluate if the employer provided employees with new information the employer acquired which indicates significantly increased risks to, or measures necessary to protect, employee health as compared to those risks and measures stated on a previously provided MSDS within thirty (30) days of receipt.



## 7. Trade Secrets

### a. Confidentiality

Compliance personnel shall keep confidential any legitimate trade secret information acquired during the course of an investigation or inspection, §5194(i)(1)(D) and (i)(3).

### b. Trade Secret Claim, §5194(i)(1)

1. A manufacturer, importer or employer may withhold the specific chemical identity of a hazardous substance from the MSDS, but must satisfy the following four requirements:
  - a. The trade secret claim can be supported;
  - b. Information contained in the MSDS about the properties and effects of the hazardous substance be disclosed;
  - c. The MSDS indicates that the specific chemical identity is being withheld as a trade secret; and
  - d. The specific chemical identity is made available to health or safety professionals, employees, and designated representatives.
2. When an employer claims during the course of an investigation or inspection that certain information is a trade secret, compliance personnel shall contact the Research and Standards Unit in Division Headquarters to verify that the MSDS purportedly containing trade secret information has been sent to the Director for approval.

### c. Medical Emergency, §5194(i)(2)

1. When a physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first-aid treatment, the manufacturer, importer or employer shall immediately disclose the specific chemical identity of a trade secret substance to the physician or nurse, regardless of confidentiality considerations.
2. If compliance personnel are involved in securing trade secret information based on the medical emergency exception, the following provisions shall be followed:
  - a. Contact the MSDS preparer by telephone, explain the duty of an MSDS preparer to disclose chemical identify information in a medical emergency and make a demand that the information be provided to the physician or nurse immediately;
  - b. If the MSDS preparer refuses to disclose the chemical identify information and:
    - i. The MSDS preparer is located in California, compliance personnel shall contact the District Manager and the appropriate Legal Unit office to obtain a court order requiring immediate disclosure;

- ii. The MSDS preparer is located in outside of California, compliance personnel shall request through the District and Regional Managers and the Deputy Chief for Field Operations that the Chief seek the assistance of the Assistant Secretary for OSHA or another State Plan Program Administrator to compel disclosure of the information.

d. Non-emergency, §5194(i)(3)

1. In non-emergency situations, manufacturers, importers or employers are required to disclose, upon request, a specific chemical identity to a physician, nurse, industrial hygienist, safety professional, toxicologist, or epidemiologist who is providing medical or other occupational health services to exposed employees if the request is in writing and complies with §5194(i)(3)(B), (C), (D) and (E).
2. Refusals by MSDS preparers to disclose trade secret information in non-emergency situations shall be investigated by compliance personnel from the appropriate District Office.

#### D. LABORATORY EMPLOYER RESPONSIBILITIES

1. §5194(b)(3) and Labor Code §6386 provide that a laboratory which provides quality control analysis for a manufacturing process or produces hazardous substances for commercial purposes are covered by section 5194.
2. Certain laboratories may be exempt from §5194 if the laboratory comes within the scope of 8 CCR section 5191, Occupational Exposure to Hazardous Chemicals in Laboratories.

#### E. EXEMPTIONS

1. Substances Exempted From Labeling Requirements, §5194(b)(4)
  - a. Pesticides labeled in accordance with regulations under the Federal Insecticide, Fungicide, Rodenticide Act are exempt from §5154(f) labeling requirements, §5194(b)(4)(A).
  - b. Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including ingredients in such products, e.g., flavors and fragrances, labeled in accordance with regulations under the Food, Drug and Cosmetic Act, §5194(b)(4)(B).
  - c. Any distilled spirits, wine, or malt beverage intended for nonindustrial use as such terms are defined under regulations issued under the Federal Alcohol Administration Act, §5194(b)(4)(C).
  - d. An consumer product or hazardous substance, as those terms are defined under regulations issued under the Consumer Product Safety Act and Federal Hazardous Substances Act, §5194(b)(4)(D).
2. Coverage Exemptions, §5194(b)(5)

Compliance personnel shall be aware that §5194 does not apply to:

- a. Any hazardous waste as defined by regulations of the U.S. Environmental Protection Agency, §5194(b)(5)(A).
- b. Tobacco or tobacco products, §5194(b)(5)(B).
- c. Wood or wood products, §5194(b)(5)(C).
- d. Articles, §5194(b)(5)(D).

NOTE: An article is a manufactured item which (1) is formed to a specific shape or design during manufacture; (2) has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) does not release, or otherwise result in exposure to, a hazardous substance under normal conditions of use or in a reasonably foreseeable emergency resulting from workplace operations.

- e. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace, §5194(b)(5)(E).
- f. Retail food establishments and all other retail trade establishments, exclusive of processing and repair work areas, §5194(b)(5)(F).
- g. Consumer products packaged for distribution to, and use by, the general public are exempt from the Hazard Communication Standard, provided that employee exposure to the product is not significantly greater than the consumer exposure occurring during the principal consumer use of the product, §5194(b)(5)(G).

NOTE: When consumer products are used in the workplace, compliance personnel shall determine if the employee uses the product in the same form, amount, concentration and manner as it would be used by the general public. If not, compliance personnel shall evaluate use of the product according to the provisions of §5194.

- h. Agricultural pesticide applicators and farmworkers who are subject to, and comply with, the Department of Pesticide Regulation's safety and health regulations are exempt from the Hazard Communication Standard as applied to pesticides, but not to non-pesticide hazardous substances, §5194(b)(5)(H).

NOTE: Pesticide manufacturers are not exempt from the requirements of §5194.

- i. Work process where employees only handle substances in sealed containers which are not opened during normal conditions of use, except as provided in §5194(b)(5)(I)1. through 3.

Attachment: [HAZCOM Compliance Checklist](#)