

HAZARD COMMUNICATION

Employers are required to identify physical and chemical hazards in the workplace and provide information and training to employees. Key portions of the Oklahoma Hazard Communication Standard are contained in this section. Copies of the entire standard are available upon request from the PEOSH Section of the ODOL. Each employer must develop a hazard communication program specific to its workplace utilizing the guidance provided in this chapter.

GENERAL PROVISIONS

380:45-1-1: Purpose

The purpose of the rules in Chapter 45 are to implement a hazardous communication standard for public employees as mandated by State law.

380:45-1-2: Definitions

For the purpose of these regulations, the terms defined hereunder shall have the following meanings therein respectively ascribed to them. Where terms are not defined, the ordinarily accepted meanings within the proper context shall apply.

“Aggregate amount” means any combination of hazardous material(s) as defined by this Chapter.

“Asbestos containing material” means any material that has been determined by a competent laboratory facility to contain more than one percent (1%) asbestos by weight.

“CAS Number” means the unique identification number assigned by the Chemical Abstract Service to chemicals.

“Chemical name” means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstract Service (CAS) rules of nomenclature or an alternate name found in the National Institute of Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) or a prescription generic drug name.

“Common name” means any designation or identification, such as trade name or number, code name or number, brand name, or generic name used to identify a substance other than by its chemical name.

“Container” means any barrel, bottle, box, can, cylinder, drum, pipe or piping system, storage tank, reaction vessel, or the like that contains a hazardous material.

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“Distributor” means a business, other than a chemical manufacturer or importer, which supplies hazardous substances to the employer.

“Employee” means a person permitted to work by an employer in employment.

“Employee representative” means any individual or organization authorized by an employee to exercise such employee’s rights under these regulations.

“Employer” means any entity of the state and its political subdivisions, which has in its employ one or more individuals performing services for it in employment.

“Facility” means all buildings and other stationary items located on contiguous property under common ownership or control.

“Fire department” means any duly constituted fire department operating under the authority of Title 11 article XXIX fire departments or Title 19 Chapter 21 fire protection districts or Title 18 corporations. Industrial fire brigades are excluded from this definition.

“Hazardous substance” means any substance which is a physical hazard or a health hazard.

“Health hazard” means any chemical, or biological substance or agent which is listed in the U.S. Occupational Safety and Health Administration’s list of Toxic and Hazardous Substances, 29 CFR Part 2910, Subpart “Z”; any other substance including but not limited to chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatopoietic systemics; agents which damage the lungs, skin, eyes or mucous membranes; any substance for which a Material Safety Data Sheet has been provided by the manufacturer as a hazardous material; or such substances deemed by the Commissioner, based on documented scientific evidence, that pose a threat to the safety and health of an employees .

“Manufacturer” means a person or establishment where hazardous substances are produced, synthesized, extracted, imported, or otherwise made for use or distribution.

“Mixture” means a combination of two or more hazardous substances if the combination does not occur in nature and is not, in whole or part, the result of a chemical reaction.

“Physical hazard” means any chemical which is a compressed gas, explosive, flammable, organic peroxide, oxidizer, pyrophoric, unstable (reactive) or water-reactive, or which is contained in the U.S. Occupational Safety and Health Administration’s list of Hazardous Materials, 29 CFR Part 1910 Subpart “H”; any substance for or which a material safety data sheet has been provided by the manufacturer as a hazardous material; or such substances deemed by the Commissioner, based on documented scientific evidence, that pose a threat to the safety and health of an employee.

“Proprietor” means the owner, manager, or other person or organization which has control over any location where hazardous substances are present, and which is subject to the jurisdiction of employers subject to the provisions of this Chapter.

“Research laboratory” means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods in which hazardous substances are used.

“Service contractor” means any person, company, or corporation that provides a service to the employer with or without a written agreement.

“Significant amount” means any amount of hazardous material(s) meeting the criteria in 380:45-5-5(d).

“Trade secret” means any formula, plan, pattern, process, production data, information, or compilation of information, which is not patented, which is known only to a manufacturer and certain other individuals, and which is used in the fabrication and production of an article of trade or service, and which gives the manufacturer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the federal government as necessary for national defense purposes. The chemical name and Chemical Abstract Service number of a substance shall be considered a trade secret only if the manufacturer can establish that the substance is unknown to competitors. In determining whether a trade secret is valid pursuant to these regulations, the Commissioner shall consider material provided by the manufacturer concerning the following:

- (1) The extent to which the information for which the trade secret claim is made is known outside the manufacturer’s business;
- (2) The extent to which the information is known by others involved in the manufacturer’s business;
- (3) The extent of measures taken by the manufacturer to guard the secrecy of the information;
- (4) The value of the information to the manufacturer or the manufacturer’s competition;
- (5) The amount of effort or money expended by the manufacturer in developing the information;
- (6) The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means.

“Wet floor” means a floor which is used on an occasional to routine basis to collect, contain, maintain or transmit standing liquids.

“Work area” means any room or defined space, whether within or outside of a building or other structure, where hazardous substances are present, produced, used or where exposure could occur.

“Workplace” means any location away from home, permanent or temporary, where any employee performs any work-related activity in the course of his/her employment.

380:45-1-5: Exclusions

(a) These regulations do not apply to any substances which are foods, drugs, cosmetics or tobacco products intended for personal consumption by employees while in the workplace. Additionally, these regulations do not apply to any consumer products and food stuffs packaged for distribution to and intended for use by the general public.

EMPLOYER RESPONSIBILITIES

380:45-3-1: Chemical information lists

(a) Each employer shall develop and maintain Chemical Information Lists (CIL) containing the common and trade names of all hazardous substances present in the workplace. Such annual CILs shall be maintained in alphabetical order cross-referenced to their chemical names.

(b) A CIL shall be maintained on each employee indicating the type of chemical exposures

received throughout their employment in the workplace and this information shall:

- (1) be stored for not less than 40 years; or
- (2) be provided to employees on a regular periodic basis, or upon termination in a form that includes the following statement, "You should preserve this report for future reference."
- (c) Whenever an employer discovers that an employee has received a potentially hazardous exposure to any substance or agent covered under this Chapter, the employer shall immediately notify the employee of the exposure and take such steps as may be necessary to provide medical evaluation, monitoring, or treatment.

380:45-3-2: Material safety data sheets

- (a) Each employer shall obtain or develop a material safety data sheet (MSDS) for each hazardous substance which he/she has identified on the CIL.
- (b) Each MSDS shall reflect the information contained in the sources consulted by the manufacturer in his/her hazard determination and shall contain at least the required information specified by 29 CFR 1915.97(B).
- (c) Provision of a U.S. OSHA Form 20 MSDS or equivalent shall constitute prima facie proof of compliance with 380:45-3-2(b).
- (d) If the employer becomes aware of any information which is significant regarding the health hazard of a substance, and which does not appear on the MSDS, this shall be added to the MSDS within a reasonable period of time, but not to exceed thirty days. Where trade secrets are involved, the manufacturer shall be informed in writing of the discovery and a copy shall be forwarded to the Oklahoma Department of Labor for follow-up.

380:45-3-4: CIL and MSDS review

The chemical and common names of all hazardous substances introduced into the workplace subsequent to the original listing shall be appended to the CIL when introduced into the workplace, but not to exceed a thirty-day period with the original listing and appendage being revised and realphabetized annually. Each employer required to prepare CILs and MSDSs, shall review their CILs and MSDSs, and shall update, revise and realphabetize as needed but not less than annually.

380:45-3-6: Labeling

- (a) Labels on containers shall be applied to each container when provided to the employer from the manufacturer or distributor. Containers used by service contractors shall likewise be labeled prior to use of the hazardous substance in the employer's workplace.
- (b) The employer shall take any action necessary to ensure that every container in the work area containing a hazardous substance shall bear a label indicating the chemical name and CAS number for the substance.

(c) If the label contains a mixture, the employer shall ensure that the label identifies the chemical names and CAS numbers of the five most predominant substances contained in the mixture. The provisions of this section shall not apply to any substance constituting less than one percent (1%) of a mixture unless the substance is present at the workplace in an aggregate amount of five hundred (500) pounds or more.

(d) Employers shall be required to label pipelines only at the valve or valves located at the point at which a substance enters the workplace's pipeline system, and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a substance from the pipeline.

(e) The provisions of this section shall not apply to any substances labeled pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, 61 Stat. 163 (7 USC Section 121 et al.). The Commissioner may certify containers labeled pursuant to any other federal and/or state act as labeled in compliance with the provisions of this section.

(f) The employer shall not be required to label portable containers into which hazardous substances are transferred from labeled containers, and which are intended only for the immediate use by the employee who performs the transfer.

380:45-3-7: Training and education program

(a) Each employer shall have an employee training and education program designed to communicate information to each employee about the hazardous substances to which they are exposed. Additionally, the program shall include the established mechanism for employees to obtain and use the appropriate CILs and MSDSs.

(b) This training and education shall be provided within the first thirty days of employment and/or transfer and at least annually and shall include but not be limited to the nature of the hazards, appropriate work practices, protective measures and emergency procedures. Such information shall not be inconsistent with that contained in the MSDSs, which shall be used as a basis for the training and education program.

(c) The employer shall provide additional instruction whenever the employee may be routinely exposed to additional hazardous substances or substances which require special precautions, or whenever the employee's potential for exposure is increased due to changes in work practices or through the introduction of new toxic and hazardous substances or equipment.

(d) Employers may require that service contractors whose work or materials pose a health hazard to the employer's employees shall be responsible for the provisions of 380:45-3-7(a) through (c).

FIRE SAFETY

380:45-5-5: Placarding

(a) Signs required and adoption by reference.

The proprietor shall post signs which shall comply with this Chapter. The proprietor need not comply with the sign posting requirements of 380:45-5-3 (a) (2) if the building, structure, or location within the building or structure does not contain a significant amount of the hazardous chemical as defined in 380:45-5. The National Fire Protection Association's standard system for identifying fire hazards of chemicals based on NFPA Standard 704-1985 Edition is adopted by reference.

(1) Size. The signs shall be at least seven and one-half (7 1/2) inches on each side. The sign shall have four spaces, each at least three and three-fourths (3 3/4) inches on a side. Numbers and symbols within each of the four spaces shall be at least three (3) inches in height.

(2) Location. If a building or structure has a floor space of five thousand (5,000) square feet or less, a proprietor shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than five thousand (5,000) square feet, in addition to the signs posted outside, the proprietor shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical is moved within the building, the proprietor shall also move the sign or post an additional sign at the location(s) where the hazardous chemical is moved. This subsection applies to significant amounts of a hazardous chemical as defined in 380:45-5(d).

(3) Categories. The signs shall identify hazards of a chemical in terms of three principle categories, namely; “health,” “flammability,” and “reactivity” (instability), and indicate the order of severity numerically by fire divisions ranging from four (4), indicating a severe hazard, to zero **(0)**, indicating no special hazard. This information is to be presented by a spatial system of diagrams with “health” always being on the left, “flammability” at the top, and “reactivity” (instability) on the right. Supplementing the spacing arrangement, color backgrounds or numbers are used for three categories, with blue representing “health” hazard, red representing “flammability,” and yellow representing “reactivity” (instability). The forth space, at the bottom, is used to indicate unusual reactivity or other special hazard warnings in black and white colors.

(b) Proprietor variance applications.

A proprietor may make application to the Commissioner for less stringent sign posting requirements.

(1) The proprietor shall make written application for a variance.

(2) The proprietor shall have the burden of proof to show that compliance imposes undue hardship on the proprietor and that the less stringent sign posting requirements as proposed by the proprietor offer substantially the same degree of notice and protection to emergency responders.

(c) Agreement between a proprietor and fire department.

In instances where the number of signs exceeds five, and where posting of a sign for each hazardous chemical would be ambiguous, repetitive, or where space is limited by the physical characteristics of the structure, the proprietor may enter into a written agreement with the fire chief of the local fire department which provides for the posting of signs for the most hazardous chemical in each principle category as set in 380:45-5-5(d)(2). The agreement is subject to the approval of the Commissioner of Labor pursuant to the procedure for a variance as specified in 380:45-5-5(b). If the variance is approved, the employer shall post in the same location as the required posted signs, a sign stating: “Signs not posted for all hazardous chemicals.” The signs shall be in block letters at least three (3) inches in height.

(d) Significant amounts.

A chemical meeting any of the following criteria shall be considered a “significant amount” of hazardous chemicals:

(1) Any amount of a hazardous chemical which is classified according to the U.S. Department of Transportation as:

(A) A class A explosive,

(B) A class B explosive,

(C) A class A poison,

(D) A class B poison,

(E) A flammable solid with a “dangerous when wet” warning, or

(F) Any radioactive material requiring a special license from the Nuclear Regulatory Agency.

(2) The aggregate amount of hazardous chemical(s) stored, placed, or used at the workplace is greater than or equal to fifty-five (55) gallons of liquid or five hundred (500) pounds of non-liquid or eight hundred (800) cubic feet of pressurized gas where the numerical rating of the hazardous chemical based on the NFPA 704-1985 system results in a:

- (A) Health rating of greater than or equal to two (2), or
- (B) flammability rating greater than or equal to two (2), or
- (C) Reactivity rating of greater than or equal to one (1).

If the hazardous chemical is a combination of the liquid and non-liquid states, the aggregate amount measurement shall be made considering the combined poundage.

(3) The requirements of this Chapter shall be superseded by other state- or federal laws where those regulations are more restrictive.

(e) Recommended communications.

It is recommended that the local fire departments and proprietors meet to collaborate on the types and amounts of hazardous chemicals as well as any unusual hazards which may be encountered by emergency response personnel.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

380:45-7-1: Employee protected

If any employee has requested information pursuant to 380:45-3-5, and has not received the information within the specified time period, the employee may then refuse to work with the substances or at the location for which the request was made. An employer may not discharge or initiate any adverse personnel action against any employee because the employee has exercised his/her right under this provision. An employer may not request or require any employee to waive any rights under these regulations and in any event if such waivers are executed they shall be null, void and unenforceable.

380:45-7-2: Disciplinary actions

Employees working in areas where exposure(s) to hazardous substance(s) exist shall be required to perform their jobs in accordance with precautions communicated to them during training and education programs. Employers may take appropriate disciplinary action when an employee does not comply with the precautionary measures this Chapter mandates.

380:45-7-3: Hazardous exposure

An employee, upon receiving a potentially hazardous exposure to any substance or agent covered under this Chapter, shall immediately notify the employer of such exposure.

ASBESTOS NOTICE AND LABELING

380:45-15-1: Labeling

Pipes, boilers, storage vessels, structural members or equipment with insulating material that might be removed, penetrated, damaged or otherwise disturbed by repair, remodeling; renovation, maintenance or other activity, shall be labeled with cautionary labels. Such caution labels shall be printed in letters of sufficient size and contrast as to be readily visible and legible. Each room or area where the conditions requiring such labels exist shall have a minimum of one such label, and such additional labels as may be necessary to insure ready visibility and legibility. Such equipment with asbestos containing material shall bear the following label:

**DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD**

380:45-15-2: Asbestos notice

For facilities asbestos containing material used as acoustical material on ceilings or walls, employers or their representatives having administrative jurisdiction over such facilities shall insure that the following notice is posted informing employees of the presence of asbestos in the workplace:

**NOTICE TO EMPLOYEE
This facility has been inspected for the presence of asbestos containing material.
Asbestos containing material is present in this facility.
Asbestos containing material may cause health problems.**

320:45-15-3: School inspections

Schools inspected pursuant to the Environmental Protection Agency's asbestos inspection program (40 CFR Part 763) and having complied with the notification requirement contained therein (40 CFR 763.6) shall be exempt from the requirements of 380:45-15-2.

SAFETY PROGRAMS

380:45-21-1: Definitions

The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

“Announced inspection”, means any inspection for the purpose of determining Compliance with 40 O.S. 403E conducted on the first working day of any calendar quarter or any inspection for which 48 hours notice is given to the employers. Announced inspections will be conducted only for the purpose of determining compliance with 40 O.S. 403E.

“Employee” means a person permitted to work by an employer in employment.

“Employer” means the state and all its political subdivisions which has in its employ one or more individuals performing services for it in employment.

“Safety class” means instruction in safety and/or health and includes, but not limited to: videos, audio tapes, books, brochures, handouts, slides, classroom instruction or lectures including in-service training or “tailgate sessions”.

“Safety coordinator” means an employee who has been designated by an employer to coordinate all safety programs of the employer.

“Safety programs” means those employer activities that:

- (A) Implement management commitment to worker safety and health generally.
- (B) Implement procedures for identifying and controlling workplace hazards.
- (C) Develop and communicate safety plans, rules and work procedures.
- (D) Conduct or provide for training for supervisors and employees in safe and healthful work practice.

“Type or class of employee” means the occupation, activity, standard industry designation or other characteristic of employees that has a bearing on the nature or extent of workplace hazards to which they are exposed.

380:45-21-2: Designation and duties of safety coordinator

(a) The Safety Coordinator may be designated by letter, memorandum, job description or other notice.

(b) Duties of the Safety Coordinator must include responsibility for the four key elements of a safety program described in the definition of Safety Program in 380:45-21-1.

(c) Employers may designate more than one employee to fulfill safety coordinator functions and may task such coordinators at their discretion provided that all employees are served with all the safety program elements described in the definition of safety program, and that a single safety coordinator has responsibility for all programs.

380:45-21-4: Safety classes

(a) Employers shall conduct training pursuant to a safety and health program in which the employer at a minimum:

(1) Appoints coordinator pursuant to 40 O.S. 403(E) meeting the requirements of OAC 380:45-21-2.

(2) Has in place a safety program that:

(A) Is appropriate to the site of the organization and nature of hazards encountered by the employees.

(B) Has In affect the core elements of a safety and health program described in OAC 330:45-21-1 “Safety Programs”.

(3) Provides a schedule of training to employees that:

(A) Provides training to each type or class of employee no less than quarterly.

(B) The class time and content, of which is based on the nature and seriousness of the hazards associated with the employers workplace.

(4) Maintains documentation including:

(A) Responsibilities and authority of coordinator.

(B) Written safety program encompassing the elements described in OAC 380:45-21-1.

(C) Training contents and attendance.

(b) Training will be considered to be adequate to meet the requirements of 40 O.S. 403(E) if:

(1) The employer maintains a low injury and/or illness rate as demonstrated by substantive records (such as OK-200 log - Workers Compensation experience modification, etc.) and/or

(2) The employer is achieving reductions in the rate of injuries and illnesses.

380:45-22-5: Enforcement

(a) Employers having not the conditions in Section 380:45-21-4 above will be considered in compliance with 40 O.S. 403(E).

(b) Shortcomings in safety and health programs or training identified during DOL inspections:

(1) Will be reported to the employer in a standard written report and;

(2) Abatement dates for such hazards or shortcomings will be established in consultation with employer representatives and;

(3) If employer agrees to and completes timely abatement no enforcement action will be taken.

(c) Extensions to abatement dates may be granted by the Commissioner or his designee if:

(1) The employer demonstrates having made a good faith effort to correct the hazard on program shortcomings within the specified time frame and;

(2) Shows the correction has not been made because of factors beyond the employers control and;

(3) Is taking effective interim, steps to safeguard employees pending correction.

(d) Employers refusing to comply with abatement dates will be provided the opportunity for a due-process bearing under the Administrative Procedures Act pursuant to 40 O.S. 410(F).