



# OSHA 30/30<sup>®</sup>

A thirty minute update  
on OSHA law every thirty days

with  
**Manesh Rath**

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## **New HazCom Standard: Everything You Need to Know**

June 26<sup>th</sup>, 2024

# Manesh Rath

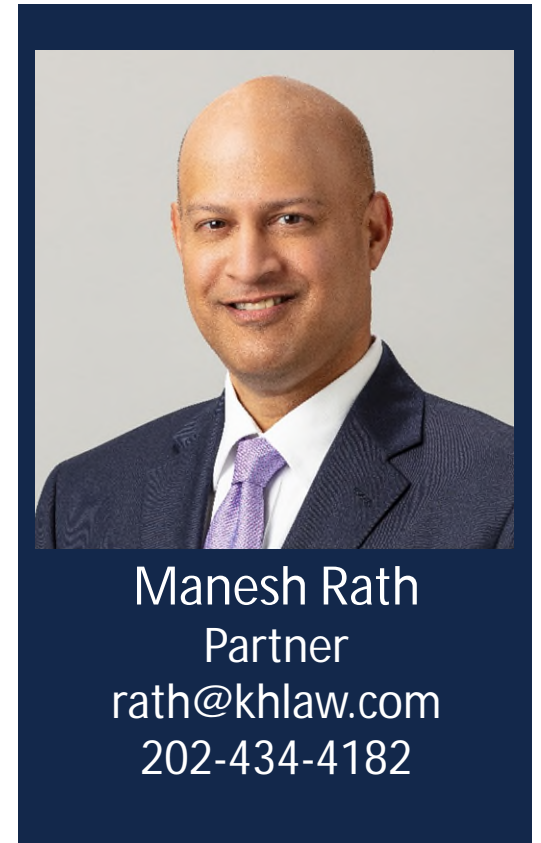


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016 through 2024, and in 2023, selected in his field as Lawyer of the Year; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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# Taylor Johnson



Taylor Johnson is an environmental lawyer specializing in the area of environmental regulation of products, including chemical control, pesticides, energy efficiency regulation, and importantly, domestic and international transportation of hazardous materials. Mr. Johnson also advises clients on community-right-to-know laws, Proposition 65, occupational safety and health matters, and supports a wide variety of commercial tort and other litigation issues.

Mr. Johnson has special expertise in the area of hazardous materials transport, including enforcement defense and compliance counseling. Mr. Johnson helps companies secure competent authority approvals, special permits, and letters of interpretation from regulatory authorities around the world. He has also prepared successful petitions to PHMSA on behalf of shippers seeking regulatory relief.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



# Topics to Be Discussed

- ◆ Background
- ◆ Chemical Hazard Classification: Downstream Reactions
- ◆ Alignment with Canada's WHMIS and GHS (rev. 7)
- ◆ Changes to Confidential Business Information (CBI)
- ◆ Additional Labeling Changes
- ◆ Additional SDS Changes
- ◆ Implementation Timeline
- ◆ What Employers Should Do



# Background: Revisions to HCS

- ◆ February 16, 2021: OSHA published Notice of Proposed Rulemaking (NPRM) to modify the HazCom Standard (HCS) 29 CFR 1910.1200
- ◆ September 21-23, 2021: Agency held informal public hearing to gather input from interested stakeholders
- ◆ October 11, 2023: Proposed Rule sent to OMB
- ◆ May 20, 2024: Final Rule for HCS published



# Chemical Hazard Classification: Downstream Reactions



## 2012 Rule

- ◆ For each chemical, the chemical manufacturer or importer shall determine the hazard classes, and where appropriate, the category of each class that apply to the chemical being classified.

## Final Rule

- ◆ . . . The hazard classification shall include any hazards associated with the chemical's intrinsic properties including:
  - ◆ (A) a change in the chemical's physical form and;
  - ◆ (B) chemical reaction products associated with known or reasonably anticipated uses or applications."

# Chemical Hazard Warnings: Downstream Reactions

- ◆ Several commenters expressed concern that new language shifted burden from downstream users to manufacturer
- ◆ OSHA: intent is not to “predict” downstream exposure
- ◆ Potential challenges to rule:
  - ◇ Failure to consider the costs of evaluating “reasonably anticipated uses”
    - Increased costs in SDS and labelling software
  - ◇ No explanation of what “reasonably anticipated” means
- ◆ The changes in scope between the proposed and final rule can not be so substantial that the new rule is inequitable to regulated parties





# Alignment with Canada's WHMIS: Small Packages



- ◆ Small packages will now have special labeling provisions for 100 ml or less and 3 ml or less containers
  - ◆ 100 ml or less
    - Product identifier, pictograms, signal word, manufacturer's name and phone number and statement that full label is on immediate outer package
  - ◆ 3 ml or less (if label interferes with normal use)
    - No label required – container must bear the product identifier



# Alignment with GHS (rev. 7): Revised Hazards

- ◆ Revised health hazard classification protocol (tiered evaluation) in Appendix A for:
  - ◇ Skin corrosion/irritation
    - Non-animal test methods
  - ◇ Serious eye damage/irritation
  - ◇ Chemicals corrosive to the respiratory tract
- ◆ Revised physical hazards in Appendix B:
  - ◇ Flammable gases
  - ◇ Desensitized explosives
  - ◇ Aerosols



# CBI Concentration Ranges

- ◆ 0.1% to 1%
- ◆ 0.5% to 1.5%
- ◆ 1% to 5%
- ◆ 3% to 7%
- ◆ 5% to 10%
- ◆ 7% to 13%
- ◆ 10% to 30%
- ◆ 15% to 40%
- ◆ 30% to 60%
- ◆ 45% to 70%
- ◆ 60% to 80%
- ◆ 65% to 85%
- ◆ 80% to 100%



# Additional Labeling Changes



- ◆ Exclamation point for hazards not otherwise classified
- ◆ Pictogram not required on label when Department of Transportation (DOT) placard is the same
- ◆ Bulk shipment labels should be on shipping papers (bill of lading), or the immediate container
- ◆ Responsible party address and phone number must be in the U.S.
- ◆ Relief for previously packaged and labeled containers for shipment



# Additional SDS Changes

- ◆ Section 1 (Identification): Address and telephone number must be in the United States
- ◆ Section 2 (Hazards): Updated “reasonably anticipated” hazards
- ◆ Section 8 (Exposure Control): OSHA PEL or other exposure limits must be included for all ingredients listed in Section 3
- ◆ Section 9 (Properties): new calculations to determine boiling point of flammable liquid and accompanying storage containers





# When Does the Final Rule Go Into Effect?

Compliance Date	Requirement(s)	Affected Party
Transition Period – July 19, 2024, to the effective completion dates notes below	May comply with either the final standard) or the 2012 standard, or both	Chemical manufacturers, importers, distributors, and employers
18 months after publication	Update substance labels and SDS	Chemical manufacturers, importers, distributors and employers
24 months after publication	Update workplace labels, hazard communication program and training for substances	Employers
36 months after publication	Update mixture labels and SDS	Chemical manufacturers, importers, distributors and employers
42 months after publication	Update workplace labels, hazard communication program and	Employers

# What Employers Should Do

- ◆ Develop plan for meeting key dates in implementation schedule
- ◆ Changes to SDS's or labels also necessitate changes to written communication plan and training
- ◆ SDS and label need to align
- ◆ Each unique ingredient must be a line item in the SDS (even if claimed as "trade secret" and contains a range)
- ◆ Review documentation to check for evidence of "reasonably anticipated uses or applications"




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Please join us  
at 1:00 p.m., Eastern Time  
July 24, 2024  
[www.khlaw.com/OSHA3030](http://www.khlaw.com/OSHA3030)



Please join us at 10:00 a.m. Eastern U.S.  
August 28, 2024  
[www.khlaw.com/REACH-3030](http://www.khlaw.com/REACH-3030)



Please join us at 1:00 p.m. Eastern U.S.  
June 27, 2024  
[www.khlaw.com/TSCA-3030](http://www.khlaw.com/TSCA-3030)



**Thank You**



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