

SUBJECT: Enforcement Guidelines for the Hazard Communication and Employee Right-to-Know Standards (29 CFR 1910.1200 and Minnesota Rules Chapter 5206) in General Industry and Construction.

PURPOSE: This instruction establishes policies and provides clarifications to ensure uniform inspection procedures are followed when conducting inspections to enforce the Hazard Communication and Employee Right-to-Know Standards.

SCOPE: This instruction applies Minnesota OSHA-wide.

REFERENCES:

1. MNOSHA Field Compliance Manual (FCM) and Compliance Rating Guide (CRG).
2. Minnesota Rules, Chapter 5206, "Employee Right-to-Know Standard" - 5205.0100 to 5205.1200."
3. Minnesota Rules 5210.0900 to 5210.0960, "Trade Secret Registration."
4. Minnesota Rule 5205.0110, "Workroom Ventilation and Temperature."
5. 29 CFR 1910.1020 "Access to Employee Exposure and Medical Records."
6. 29 CFR 1910.1200, "Hazard Communication"
7. 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories."
8. 29 CFR 1910.95 and 1926.52, "Occupational Noise Exposure."
9. 29 CFR 1910.1096 and 1926.53, "Ionizing Radiation."
10. 29 CFR 1910.97 and 1926.54, "Nonionizing Radiation."
11. MNOSHA Instruction CPL 2.111, "Paperwork and Written Program Violations."
12. MNOSHA Instruction CPL 2-2.1 – "Noise Measurements and Citations in General Industry"
13. Federal OSHA Instruction CPL 02-02-079, "Inspection Procedures for the Hazard Communication Standard (HCS 2012)" (fka CPL 02-02-038).
14. Federal OSHA Instruction CPL 02-00-111 (fka CPL 2.111, "Citation Policy for Paperwork and Written Program Requirement Violations," - Appendix A, "Documentation of Citations Related to the Exposure to Hazardous Substances and Consumer Products."

CANCELLATION:

This instruction supersedes MNOSHA Instruction CPL 2-2.38, Enforcement Guidelines for the Employee Right-to-Know Standard (Minnesota Rules Chapter 5206) in General Industry and Construction, dated December 28, 2015.

BACKGROUND:

The Employee Right-to-Know Act was passed by the Minnesota Legislature in 1983 and has been revised several times since then. At the time of its adoption, it was a new concept for employers and MNOSHA's enforcement of the Act was directed at the establishment of rudimentary Employee Right-to-Know (ERTK) programs. Since then, Federal OSHA has issued its Hazard Communication Standard and employers have a wider knowledge of the requirements for such programs. Minnesota OSHA did not adopt the federal Hazard Communication Standard when it was first published, but continued to enforce the Employee Right-to-Know Standard.

The Employee Right-to-Know Act applies to all employers in Minnesota with the exception of Federal agencies. It does not differentiate between general industry and construction.

The Act is intended to ensure that employees are aware of the dangers associated with hazardous substances, harmful physical agents, or infectious agents they may be exposed to in their workplaces. Employers are required to evaluate, or survey, their workplaces for the presence of hazardous substances, harmful physical agents, and infectious agents and provide

training to employees concerning those substances or agents. A written ERTK program is required.

In December, 1992, the Employee Right-to-Know Standard was updated to incorporate all changes made in the Act by the Legislature since 1989. Changes included a new definition for Technically Qualified Individuals, removal of the exclusive application of infectious agents provisions to hospitals and clinics and extending coverage to all employers, and amendments to coincide with the adoption of the new Occupational Exposure to Bloodborne Pathogens Standard.

In March, 2012, federal OSHA published amendments to 1910.1200 which incorporated (most of) the requirements of the United Nations' Globally Harmonized System of Classification and Labeling of Hazardous Chemicals (GHS). MNOSHA adopted 1910.1200 on September 10, 2012. The provisions for harmful physical agents and infectious agents are not affected by the adoption of 1910.1200 and continue to be enforced under ERTK. Requirements for annual training and recordkeeping, though not a part of 1910.1200, will continue to be enforced under ERTK.

This instruction includes clarifications and interpretations which respond to the most frequently asked questions and points of common misunderstanding.

The ERTK Act refers to chemicals as hazardous substances, while Hazcom uses hazardous chemicals. Their meaning should be considered the same for purposes of enforcement. They are referred to as hazardous chemicals in this directive.

This directive has been amended to provide guidelines consistent with all paragraphs of Hazcom which are effective as of June 1, 2016.

ACTION:

A. Inspections. All inspections shall include, if appropriate, a review of the employer's ERTK/Hazcom program and employee interviews to assess compliance with the standard.

1. Every employer who has employees who are exposed to hazardous chemicals must comply with all portions of the federal Hazcom standard by June 1, 2016 and certain requirements of the ERTK standard.
 - a. Exposed means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (e.g. accidental or possible) exposure. "Subjected" in terms of health hazards includes any route of entry (e.g. inhalation, ingestion, skin contact or absorption.)

The HCS applies to any hazardous chemical present in the workplace in a manner that employees may be exposed under normal conditions of use and foreseeable emergencies. The manufacturer or importer must provide the information required by the standard on any hazardous chemicals which they manufacture or import. This information must cover the normal conditions of use and foreseeable emergencies of the product. A manufacturer or importer is out of compliance if it does not provide hazard information on a known use, or should have reasonably been expected to know may occur, even if it is not the intended use under normal conditions of use or foreseeable emergency. For example, a product forms a combustible dust when ground into a powder, and the manufacturer knows this, but the manufacturer intends its product to be melted, not ground, and it perceives that there is no hazard from combustible dust if used as intended. However, the manufacturer must still warn downstream users of the known potential hazards from combustible dust.

2. Every employer who has employees who are “routinely exposed” to harmful physical agents, or infectious agents must comply with the requirements of the ERTK standard.
 - a. "Routinely exposed" means that a reasonable potential exists for exposure to harmful physical agents, or infectious agents during the normal course of the employees' work assignments. It does not include a simple walk-through of an area where an agent is present but there is no actual exposure.
- B. Temporary Employees. If seasonal or part-time workers are exposed to hazardous chemicals, harmful physical agents, or infectious agents by the tasks they are assigned to perform, they must also be covered under the Hazcom/ERTK program. If temporary employees are exposed to hazardous chemicals, harmful physical agents, or infectious agents by the tasks they are assigned to perform and are not covered under the host's Hazcom/ERTK program, a programmed related or unprogrammed related inspection of the temporary employer may be conducted to assess the temporary worker employer's Hazcom /ERTK program. If not covered by the temporary employer, then further investigation into assigned responsibilities between the host employer and temporary worker agency is warranted.
- C. Citation Guidelines. The ERTK standard incorporates both specification and performance requirements which are result-oriented, providing goals for achievement and allowing employers the flexibility to develop a program suitable for their particular worksite. In evaluating compliance with the standard, OSHIs should always consider whether the intent of the provisions has been met. In general, if the employer lacks a written Hazcom/ERTK program and has not implemented a program, OSHIs should propose the following citations:
 1. no training for employees – 1910.1200(h)(1) (chemicals) or 5206.0700 subp. 1 and subparts 3 or 4 (physical or infectious agents) or as appropriate,
 2. no written program- 1910.1200(e)(1) (chemicals) or 5206.0700 subp. 1B (physical or infectious agents) or (no penalty for first instance),
 3. lack of labeling - 1910.1200(f)(6) (chemicals) or 5206.1100, and
 4. lack of SDS - 1910.1200(g)(8) (chemicals), or 5206.0800 subp. 1.

MULTI-EMPLOYER WORKSITES:

- A. Definition. The term "multi-employer worksite" means those establishments where employees of more than one employer are performing work and are exposed to hazardous chemicals, harmful physical agents, and/or infectious agents. All types of worksites may be multi-employer worksites, not just construction sites.
- B. Information Exchange. The SDS information exchange or access requirements of Hazcom/ERTK pertain to employers who introduce hazardous chemicals into the worksite and expose another employer's employees. This requirement covers each hazardous chemical to which the other employer's employees may be exposed.

The controlling employer or general contractor on a multi-employer worksite is required to provide other employers or contractors with a copy of pertinent SDSs or to make them available at a central location in the facility. Therefore, one employer does not actually have to physically give another employer the SDSs, but must inform the other employer of the location where the SDSs will be maintained.

- C. Site Responsibility. The controlling employer or general contractor has overall site safety responsibility. Subcontractors have responsibilities to their own employees and to each other. More than one employer or contractor may be cited for Hazcom/ERTK violations if the condition affects more than one employer's employees (e.g., carbon monoxide exposure or the use of silica sand in abrasive blasting, etc.).

- D. Citation Guidelines. In accordance with Field Compliance Manual (FCM) Chapter V, citations shall be issued to each employer whose employees are exposed to violations of the Hazcom/ERTK standard. The controlling employer or contractor who has created the hazard will be cited regardless of who employs the exposed employees. Employers, including temporary worker employers, who knowingly, or due to inadequate diligence, expose their employees to hazards not created by themselves will also be cited. The controlling employer or general contractor may be cited if one contractor exposes another contractor's employees to hazards even though the general or controlling employer's own employees are not exposed. To determine whether or not to cite an employer who did not create the hazard, the OSHI must determine whether the employer was reasonably diligent in surveying the worksite for hazards covered by Hazcom/ERTK. Ask how training and other responsibilities were determined and check for any written documents that may provide additional evidence of how assignments of responsibility were determined. All exposed workers will be used as the number of employees for purposes of calculating penalties for these citations.

CLASSIFICATION OF VIOLATIONS:

Citations for violation of the Hazcom and ERTK Standards shall be assigned severity and probability ratings according to FCM Chapter VI and the MNOSHA Citation Rating Guide.

EXCEPTIONS:

- A. Technically qualified individuals (TQI). TQIs are individuals who, because of their training, education, and experience, are deemed to be knowledgeable in the hazards associated with hazardous substances, harmful physical agents, and infectious agents.

The only individuals who may claim TQI status are: "physicians, dentists, pharmacists, or lead research individuals." They must be employed in a "research, medical diagnostic, medical educational laboratory or in a health care facility, or in a pharmacy registered ...under MS§151" (State Board of Pharmacy).

The Hazcom standard does not contain an exemption for TQI's therefore they must be included in the employer's Hazcom program as it may pertain to hazardous chemicals. The TQI exemption may still be applied to harmful physical agents or infectious agents but not bloodborne pathogens as described below.

TQIs do not need ERTK training for physical agents or infectious agents; however, they must be notified when such training is going to be given to other employees and allowed to attend if they wish.

NOTE: The TQI exemption applies only to ERTK training and has no effect on bloodborne pathogens training that is required by 1910.1030(g)(2). Therefore, employers whose employees are exposed to bloodborne pathogens (which are infectious agents) must include TQIs in the bloodborne pathogens training. If bloodborne pathogens are covered as part of the infectious agents training program, TQIs must attend.

- B. Farms. Farming operations covered under the Agriculture Standards, 1928, must follow the Hazcom standard.
1. Hazardous chemicals. Farming operations covered under the Agriculture Standards, 1928, must follow the Hazcom standard.
 2. Physical agents. Farming operations employing more than ten employees or operating a temporary labor camp and employing any of its residents, must comply with the Farming Operations Training Plan Standard, Minnesota Rules 5206.1300 to 5206.1900. Note that heat is the only physical agent which is covered (5206.1600 subp. 2).

- C. Pesticides. OSHA is preempted from enforcing the labeling requirements of the Hazard Communication Standard, and also for worker training for certified applicators and agricultural workers. However, OSHA does cover all other workers such as those manufacturing pesticides. In addition, OSHA is not preempted under FIFRA from enforcing the requirement for SDSs, which applies to pesticide applicators as well as manufacturers of pesticides.
- D. Waste Service Employers. Employers who collect, process, or dispose of waste regulated under the federal Resource Conservation and Recovery Act are exempt from the hazardous chemicals and harmful physical agents training and information requirements of Hazcom/ERTK. Waste service employers include garbage and rubbish collectors, landfill operators, hazardous waste transporters, and independent testing laboratories or government agencies who visit hazardous waste sites.
- E. Laboratories. Laboratories must develop and implement the Chemical Hygiene Plan required by 1910.1450 and are not required to comply with Hazcom. Most quality control laboratories would not be considered "laboratories" under this definition and, since they are usually adjuncts of production operations, must comply with Hazcom. In addition, establishments such as dental, photofinishing, and optical laboratories are not considered to be "laboratory" operations since they are engaged in the production of a finished product; these facilities must also comply with the requirements of Hazcom. Limited sections of the Hazcom standard apply to laboratories, see 1910.1200(b)(3).
- F. Mines. Mines are not exempt under Hazcom/ERTK. MNOSHA will follow the procedures outlined in the MSHA/OSHA jurisdictional agreement (which provides for OSHA enforcement where no MSHA standards exist) and MNOSHA Instruction CPL 2.42, "MNOSHA Jurisdiction and Interagency Agreements" if a question arises concerning MNOSHA's Hazcom/ERTK enforcement in mines.
- G. Consumer Products. It is MNOSHA's policy not to issue citations for consumer products unless the OSHI can document that the product was used in the workplace in a manner not intended by the manufacturer or the frequency and duration of use results in exposures that are significantly greater than those experienced by a normal consumer. Citations may only be issued in cases where the OSHI can document that the use falls outside of the (b)(6)(ix) exemption.

WRITTEN PROGRAM:

- A. OSHIs shall review the employer's written Hazcom/ERTK program to determine if all applicable requirements of 1910.1200(e) (chemicals) or 5206.0700, subpart 1, Items B and C, have been addressed.
- B. Employers must develop and implement a written Hazcom/ERTK program for hazardous chemicals, harmful physical agents, and infectious agents which includes:
 - 1. an outline of training that will be provided to employees;
 - 2. a list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate SDS-- (the list may be compiled for the workplace as a whole or for individual work areas);
 - 3. a description of the labeling systems or other forms of warning utilized in the workplace;
 - 4. the methods the employer will use to inform employees of the hazards of infrequent or non-routine tasks that involve exposure to hazardous chemicals, harmful physical agents, or infectious agents;

5. the methods the employer will use to inform employees of the hazards associated with hazardous chemicals contained in unlabeled pipes in their work areas.
- C. In addition to the above information, multi-employer workplace employers must include a description of the following in their written Hazcom/ERTK programs:
1. the methods the employer will use to inform other employers with employees working at the workplace of the hazardous chemicals, harmful physical agents, or infectious agents employees may be exposed to while performing their work;
 2. the methods the employer will use to provide other employers with a copy of the SDS or other written information, or how it will be made available in the workplace (e.g., a central location) for each chemical or agent the other employer's employees may be exposed to while working in the facility;
 3. the methods the employer will use to inform other employees of required precautionary measures that must be taken during normal operating conditions and in foreseeable emergencies; and
 4. the methods the employer will use to inform the other employers of the labeling system used in the workplace.
- D. Temporary worker employers and host employers share responsibility for ERTK/Hazcom. Host employers are likely to have more specific knowledge of the specific hazards associated with their workplace and, therefore, may be the best equipped to provide training and information relative to their workplace. However, if temporary worker employers intend to rely on a host employer's ERTK program for compliance, it must be specifically stated in their own written program and the temporary worker employers should, at a minimum, inform employees of the requirements of the standard.
- E. Employers whose employees are exposed to bloodborne pathogens as part of their job duties are required to develop and implement an Exposure Control Plan under 1910.1030. If the employer includes all infectious agents to which employees may be exposed in the Exposure Control Plan, and that plan meets the requirements of 1910.1030, the ERTK requirement for a written program for infectious agents will have been met.
- F. The written Hazcom/ERTK program should be maintained at the worksite at all times and must be available upon request to employees, their designated representatives, and MNOSHA.
- G. Citation Guidelines/Written Hazcom/ERTK Program.
1. Where employees are exposed or potentially exposed to a hazardous chemical, harmful physical agent, or infectious agent; **and** labeling, SDS, chemical inventory, and training requirements are met; **but** there is no written plan or the written plan is deficient, a non-serious citation shall be issued without a penalty (first instance).
 2. Cite 1910.1200(e)(2) if hazardous chemical information is not provided to other employers. Cite 5206.0700, subpart 1(c) when an employer in a multi-employer workplace does not provide other employers on the site with required ERTK information for harmful physical agents or infectious agents.
 3. Where there is an overlap in the written program requirements between Hazcom/ERTK and another standard (e.g., bloodborne pathogens, noise, etc.), and a deficiency in the written program is covered by both standards, cite the more specific standard.

EMPLOYEE INFORMATION AND TRAINING.

- A. The ERTK standard requires employers to provide training "at no cost to employees." Therefore, training must be conducted during the employees' regularly scheduled work times. If employees are required to attend training at a time other than their normal work schedule, they must be compensated for that time (e.g., overtime, equivalent time off, etc.). The Hazcom standard does not specifically address this, therefore cite 5206.0700(1)(A) if employees are not compensated for their time to attend training.
- B. The training requirements of Hazcom/ERTK will generally complement rather than satisfy the existing training requirements of other OSHA standards (i.e., expanded health standards, etc.)
1. Training programs must be evaluated through program review, discussions with management, and employee interviews. 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 chemical, harmful physical agents, and infectious agents?
 - b. Is this training provided before initial assignment?
 - c. Is training provided whenever a new hazard is introduced into work areas?
 - d. Is annual update training given?
 2. Employee interviews will provide general information to the OSHI regarding the training program; employees must be aware of what hazards they are exposed to, know how to obtain and use information on labels, SDSs, or other reference materials, and know and follow appropriate work practices. However, if the OSHI 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.
 3. The current employer is responsible for Hazcom/ERTK employee training. Hazcom/ERTK training must be worksite specific. If a chemical covered by Hazcom/ERTK is available for use and employees are expected to use it or work in an environment where it is used or exists, then training must be provided.
 4. Giving an employee a data sheet, package insert, reference manual, or other printed material to read, or having them sit and watch a video does not meet the Hazcom/ERTK training requirements. Training is to be a forum for explaining to employees not only the hazards in their work area, but also how to use the Hazcom/ERTK information.
 - a. Audiovisuals, interactive video, printed materials, etc. may be used as part of the program but must be supplemented by specific information related to the employees' job duties and related exposures.
 - b. Training shall include an opportunity for employees to ask questions to ensure that they understand the information presented to them.
 5. Employers are required to make a written copy of the information required for training "readily accessible" in the area where harmful physical agents, or infectious agents are used or handled, or available for hazardous chemicals. This will generally be accomplished through a written document (e.g., SDSs, infectious disease reference manual, etc.).
 - a. "Readily accessible" or available means that the information is convenient to, or nearby, the employee's work area and can be easily obtained by the employee without delay.

- b. Access to a computer terminal, microfiche machine, or other display device is acceptable as meeting the requirement for written information in the workplace if employees are trained in the use of the terminal or other device and can easily access the information during the workshift.
 - c. If information is made available to employees in the workplace by computer, a hard copy printout of the information must be made available to an employee who requests it within 24 hours of the request (excluding nonworkdays).
- 6. Employers who use a small number of chemicals may decide to conduct training by going through the SDS for each substance. Employers with a large number of chemicals may decide to train on specific exposure hazards, common hazards of a broad class of chemicals or agents, hazards of a complete production operation, or any other grouping of similar information.
 - 7. Training must be provided in a manner that can be reasonably understood by the employees. If employees must receive job instructions in a language other than English, then ERTK/Hazcom training and information must also be conducted in that language.
 - 8. Temporary, seasonal, and part-time workers who are assigned to tasks which could potentially expose them to hazardous chemicals, harmful physical agents, or infectious agents must also be included in the training program.
 - 9. Technically qualified individuals (TQIs) are exempt from ERTK training for harmful physical agents or infectious agents. However, employers must notify TQIs when training will be conducted for other employees and allow the TQIs to attend if they wish. If TQIs choose to attend ERTK training, they must be paid for the time they spend at ERTK training.

C. Frequency.

- 1. Employees are to be trained before initial assignment to a job where there is a reasonable potential for exposure to a hazardous chemical, harmful physical agent, or infectious agent during the course of assigned work. The intent of this provision is to have information prior to exposure to prevent the occurrence of adverse health effects. This purpose cannot be met if training is delayed until a later date.
- 2. Employees must also be trained before being exposed to any new or additional hazardous chemical, harmful physical agent, or infectious agent.
- 3. Hazcom/ERTK training must be **updated at least annually**. Update training may be brief summaries of information previously included in Hazcom/ERTK training.

D. Training Records.

- 1. Employers are required to maintain records of training and retain those records for three years. Training records must be maintained at the worksite and made available, upon request, for review by employees and MNOSHA. For mobile worksites, such as construction, training records may be kept on site or at a central location. If training records are kept at a central location, employees must know how to access those records and arrangements must be made for MNOSHA access upon request. Records may be kept in whatever format or medium (i.e., paper, computerized, etc.) the employer chooses as long as the elements listed in Item 2 (a. to d.) below are included in the records and the information is available to employees and MNOSHA when requested.
- 2. Training records must include the following information:

- a. the dates training was conducted
 - b. the name, title, and qualifications of the person who conducted the training,
 - c. the names and job titles of employees who completed the training, and
 - d. a brief summary or outline of the information that was included in the training session.
- E. Right to Refuse to Work. Employees may no longer refuse to work simply because Hazcom/ERTK training has not been provided. The right to refuse to work under imminent danger conditions, however, remains in effect (ref §182.654 subd. 11).

HAZARDOUS CHEMICALS:

A. General.

1. The Hazcom standard includes a definition of hazardous chemicals but does not contain a list of them. The list of hazardous substances included in 5206.0400 is not all inclusive and does not include all hazardous substances that exist.
 2. Employers must use reasonable diligence in evaluating their workplaces to determine what hazardous substances exist. The fact that a particular hazardous substance is not listed in subpart 5 of 5206.0400 does not exempt the employer from including it in the Hazcom/ERTK program.
 3. Appendix A to this instruction, "Materials Commonly Used in Construction," is a list of the most common toxic chemicals, including their associated hazards and classes, that can be found on construction sites.
- B. Ten categories of hazardous chemicals are defined in 1910.1200(b)(6) as exempt from the Hazcom standard, including:
- (i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;
 - (ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with Environmental Protection Agency regulations.
 - (iii) Tobacco or tobacco products;
 - (iv) Wood or wood products, including lumber which will not be processed, where the chemical manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility (wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut, generating dust, are not exempted);
 - (v) Articles (as that term is defined in paragraph 1910.1200(c) of this section);
 - (vi) Food or alcoholic beverages which are sold, used, or prepared in a retail establishment (such as a grocery store, restaurant, or drinking place), and foods intended for personal consumption by employees while in the workplace;

(vii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (e.g., tablets or pills); drugs which are packaged by the chemical manufacturer for sale to consumers in a retail establishment (e.g., over-the-counter drugs); and drugs intended for personal consumption by employees while in the workplace (e.g., first aid supplies);

(viii) Cosmetics which are packaged for sale to consumers in a retail establishment, and cosmetics intended for personal consumption by employees while in the workplace;

(ix) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended;

(x) Nuisance particulates where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered under this section.

C. Availability of Information/Safety Data Sheets.

1. The standard requires manufacturers of hazardous chemicals or mixtures of hazardous chemicals to provide employers who use their products with complete, up-to-date SDSs (1910.1200(g)(6)(ii)). The term "chemical manufacturer" means an employer with a workplace where chemicals are produced for use or distribution.
2. SDSs must be current, accurate, and complete and must be provided at the time of the first shipment and whenever the information on the SDS is revised. The SDS need not be sent with each shipment to the same purchasing employer as long as the information on the original SDS remains current.
3. OSHIs must determine that SDSs have been obtained for all hazardous chemicals used by the employer and review those SDSs for completeness. The number of SDSs selected for review will depend on the number of chemicals used in the workplace, the severity of the hazards involved, the completeness of the SDSs in general, and the volume of chemicals used. It is not necessary to review every SDS. A guide for reviewing the completeness of SDSs is in Appendix B of this instruction.
4. Federal OSHA Form 174 is a non-mandatory SDS form that includes spaces for all required information. If the employer chooses another format, the information required on OSHA Form 174 must be included. To be acceptable under Hazcom, the SDS must include all required information as defined in 1910.1200.
5. SDSs or equivalent written documentation (e.g., computer form, display terminal, etc.) containing all information that would normally be found on an SDS must be available in each location for the hazardous chemicals used at the worksite.

NOTE: It is suggested, but not required, that the controlling employer or general contractor have all other employers and/or subcontractors locate the necessary SDSs in one central accessible location on the worksite.

6. If SDSs have not been obtained by the employer, or have been obtained but are incomplete (e.g., missing information required for training under 1910.1200(h)), the OSHI shall advise the employer to contact the manufacturer/supplier to request that the missing information or missing SDS be provided within 30 days. If complete information is not

received from the manufacturer within 30 days, the employer must contact Minnesota OSHA for an extension and assistance in obtaining the information or be subject to possible failure to abate penalties.

- a. If the employer requests MNOSHA's assistance in obtaining the information, the OMT Director in whose area the employer is located shall contact the manufacturer responsible for the incomplete SDS.
 - b. If the employer has evidence that previous attempts have been made to obtain the information (e.g., a copy of a letter to the manufacturer, documentation of phone calls to the supplier, etc.) or if the employer does not receive the information within the abatement period, the OMT Director shall send a certified letter to the supplier or manufacturer to obtain the completed SDS
 - c. If a Minnesota supplier or manufacturer fails to respond to phone and letter requests, an OSHA-90 referral form shall be completed and forwarded to the appropriate Area Office for inspection.
 - d. If an out-of-state supplier or manufacturer fails to respond within a reasonable time (e.g., 30 days), a referral shall be made by the OMT Director to the Regional Office or the appropriate State Plan OSHA Office within whose jurisdiction the supplier or manufacturer is located.
 - e. If the SDSs are found deficient with respect to the combustibility or explosibility of the dust being handled, OSHIs shall investigate whether the employer prepared the SDS.
7. The SDS requirements apply to free samples provided by chemical manufacturers and importers since the hazards remain the same regardless of the cost to the employer.
8. Safety Data Sheets for Drugs. Most drugs come with a package insert that, in some instances, includes the same information as an SDS. In addition, a publication known as the "Physicians' Desk Reference (PDR)" contains information about drugs. The question employers often ask is whether or not a separate SDS is required for these drugs. Because Hazcom requires employers to maintain a "written document" that contains the information required for training, but does not specify that it must be an SDS, MNOSHA's policy concerning SDSs for drugs is as follows:
- a. In those situations where employees are required to handle or mix drugs in powder or liquid form in the course of their assigned job responsibilities, a package insert is acceptable in lieu of the SDS if it includes all required information needed for training as outlined in 1910.1200(h). The package insert does not need to follow the prescribed order of the 16 elements as an SDS.
 - b. The Physicians' Desk Reference (PDR) does not contain enough information on most drugs to meet the training requirements of the Hazcom standard; therefore, **the PDR is not an adequate replacement and cannot be used in lieu of an SDS.**
 - c. SDSs are required for drugs which are not in final form and do not have package inserts that provide the information needed for training.
9. Requests for assistance in obtaining SDSs from Federal OSHA, other State plan states, or from employers other than those involved in an inspection shall be referred to the Management Analyst/Standards for processing in accordance with paragraphs 5 c and d.

D. Labeling.

1. General Requirements

- a. Labels must be in English but may also be printed in other languages.
- b. The accuracy of label information is to be assessed for a representative number of chemicals. The OSHI shall determine whether the label identity can be matched with the SDS and the inventory of hazardous chemicals.

- c. OSHIs must consider alternate labeling provisions (e.g., tags or markings) for containers which are too small to accommodate a legible label.
 - d. If deficiencies are noted on a manufacturer's or importer's label during an inspection, the OSHI should make a referral to the Area Office that has jurisdiction over the manufacturer's location.
 - e. If the company name is different on the SDS and the label, the citation shall be issued to the company who most recently put their name on the label or SDS. For example, if the company is repackaging a material and putting their name on the label but not on the SDS, the citation would be against the repackager and not the company on the SDS. In this instance, all citations related to the SDS and label would be issued to the repackager.
2. Original shipping containers. Labels or other markings on each container of hazardous chemicals must include:
- a. a product identifier (which correlates to the SDS)
 - b. a signal word, only "Danger" or "Warning" are allowed, and only one word is allowed.
 - c. hazard statement(s),
 - d. a pictogram(s) (with red diamond borders),
 - e. precautionary statement(s) written out (and not reference a statement number),
 - f. the name and address of the chemical manufacturer, importer, or other responsible party.
 - g. The employer is not responsible for updating labels on shipped containers (unless they are removed or defaced).
3. Special Labeling
- a. Combustible Dust labeling.
 - i. If the hazardous chemical, in the container, in its shipped form, is a combustible dust (e.g., flour, aluminum powder, carbon black), then it must be labeled in accordance with the standard.
 - ii. If a material is a solid or a liquid when shipped and the only HCS 2012 hazard is combustible dust when the material is processed, then the labeler may comply with the labeling rules of (f)(4).
 - b. A hazard not otherwise classified (HNOC) is not required to be noted on the label but may be included as supplementary hazard information.
 - c. DOT labeling.
 - i. DOT labels are considered pictograms under HCS 2012.
 - ii. During transportation, the DOT label requirements take precedence over the requirements of HCS 2012.
 - iii. OSHA will allow labels to contain both DOT and HCS pictograms for the same hazard.
 - iv. For hazards where DOT requires no pictograms (e.g., carcinogens), HCS pictograms must appear.
 - v. DOT Tanker Truck and RR Tank Car Labeling.
 - 1. Where a tank truck, rail car, or similar vehicle comprises the container for the hazardous chemical, the labeling information may be posted on the outside of the vehicle or attached to the accompanying shipping papers or bill-of-lading. A label may not be shipped separately, even prior to shipment, since to do so defeats the purpose of providing an immediate hazard warning.
 - 2. If a tanker truck or RR tank car that is labeled per DOT labeling requirements arrives at a facility and is offloaded into a storage tank, without storage of the tanker car or RR car, the DOT label is sufficient.
 - 3. If the tanker truck or RR tank car is stored (wheels chocked and cab/engine disconnected from the tanker/rail car) prior to offloading, the requirements of HCS apply and the labels must comply with (f)(7).
 - 4. If the tanker truck or RR tank car becomes part of the process (e.g., hooked up to the piping system), it must be labeled in accordance with

(f)(7). If the tanker truck or RR tank car is used as a transport container in-house, the container must be labeled in compliance with (f)(6)(i) or (ii), as it is no longer stationary.

- d. FDA labeling. Unlabeled designated medical gas cylinders should be referred to the FDA.
 - e. Small Container labeling. There are no exemptions from labeling due to the size of the container. This can be done with pull-out labels, fold-back labels, tags or other methods. Where manufacturers can show that it is not feasible to use these, the following practical accommodation is permitted: The shipped small container (the actual container holding the hazardous chemical), must contain the following: product identifier, appropriate pictogram(s), signal word, mfr's name and phone number and a statement indicating the full label information is provided on the outside package. The outside packaging must have the following: All the applicable label elements as defined in (f)(1), must be the object that the immediate product container is placed into (not the exterior shipping container), be clearly marked to ensure the complete label elements are visible and not torn, defaced or destroyed, and any alternative labeling does not conflict with any other standards.
 - f. Solid materials. Unless exempt, the requirements of the Hazard Communication standard apply to solid materials.
4. Secondary (in-house) labels.
- a. Employers may use the manufacturer's label or continue to create their own workplace labels. OSHIs shall evaluate the effectiveness of in-plant labeling systems through a review of the employer's training program and SDS procedures, including employee interviews to determine their familiarity with the system.
 - b. Pictograms with black-and-white borders are acceptable. The workplace label does not need to include the pictogram or a description of the pictogram.
 - c. Precautionary statements and hazard statements may be used on the in-house labels but are not required.
 - d. New labels or systems are not required as long as employees are provided information on all of the health and physical hazards of the hazardous chemical.
 - e. Rating Systems.
The NFPA or HMIS rating systems do not directly correlate with the HCS classifications (e.g., the NFPA rating of 1 ("low") does not correlate with HCS classification of 1 ("high")). However, the HMIS or NFPA system may be used as part of an employer's workplace labeling system, if used in accordance with the NFPA and HMIS guidelines and as long as it does not cast doubt or contradict the validity of the label information. Employers must ensure that their training program instructs employees on how to use and understand the alternative labeling systems so that employees are aware of the effects of the hazardous chemicals to which they are potentially exposed. OSHIs should determine whether workers can recognize what hazards correspond to what code ratings/symbols. This can be achieved through employee interviews.
- Workplace labels must include the product identifier and general information regarding all of the hazards of the chemical(s) even when using the NFPA or HMIS system. In some cases, all hazards are not addressed by a particular rating system (e.g., chronic health hazards), and therefore, hazards not addressed must be communicated by words, pictures, symbols, or a combination thereof in addition to the NFPA or HMIS rating system. If any of the required label information is missing, it is not compliant with the standard.
- f. The key to evaluating the effectiveness of any alternative labeling method is to determine whether employees can correlate the visual warning on the in-plant container with the applicable chemical and its appropriate hazard warnings. The

alternative labeling system must also be readily accessible to all employees in their work area throughout each work shift. For purposes of this provision, the term "other information immediately available" does not include safety data sheets used in lieu of labels.

5. Accepted Labels. Labels that meet the requirements for labeling under certain federal regulations meet the intent of Hazcom. Employers are not required to "relabel" shipping containers that are properly labeled in accordance with the following regulations:
 - a. pesticides labeled according to the Federal Insecticide, Fungicide and Rodenticide Act;
 - b. foods, food additives, color additives, drugs, or cosmetics including materials intended for use as ingredients in these products labeled according to the Federal Food, Drug, and Cosmetic Act;
 - c. distilled spirits (beverage alcohols), wine, or malt beverage labeled in accordance with the Federal Alcohol Administration Act;
 - d. consumer products as defined in the Consumer Product Safety Act and labeled according to its requirements;
 - e. any hazardous substance as defined in the Federal Hazardous Substances Act and labeled in accordance with that act.
 - f. any agricultural or vegetable seed treated with pesticides and labeled in accordance with the Federal Seed Act.
 - g. Rating Systems.
6. Pipelines. Pipelines, pipes, and piping systems are not covered by the labeling requirements of ERTK. However, employers must train employees in the hazards associated with chemicals in unlabeled pipes in their work areas.
7. Bulk transport. Hazardous chemicals transported in bulk must be labeled according to the requirements of ANSI or the federal Department of Transportation Standard for Transportation of Hazardous Substances.
 - a. If a hazardous chemical is shipped by tank truck, rail car, or other vehicle and the "label information" is posted on the tank or vehicle or attached to the accompanying shipping papers or bill of lading, the employer purchasing the substance must ensure that employees are aware of the label warning before potential exposure to incoming substances occurs.
 - b. A label may not be shipped separately, even if it is prior to shipment of the hazardous chemical since this defeats the intended purpose of this requirement which is to provide an immediate hazard warning. Mailing labels directly to purchasers will bypass those employees involved in transporting the hazardous chemical.
8. Containers. A "container" under Hazcom is any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. Except as noted above, all containers must be labeled, tagged, or marked with at least the identity of the hazardous chemical or chemicals it contains, and words, pictures or symbols which provide general information regarding the hazards of the chemicals. Employers do not have to relabel existing containers with GHS-compliant labels.

- a. For individual stationary process containers, employers may use signs, placards, process sheets, batch tickets, operating procedures, or other written materials in lieu of affixing labels to the container as long as the alternative method identifies the container to which it applies and includes at least the identity of the substance in the container and the appropriate hazard warning.
- b. Immediate use containers (test tubes, beakers, graduates, vials, pitchers, pails, roofer's melt pot, cauldron, buggy, or similar containers which are routinely used and reused) do not have to be labeled. However, to qualify as an "immediate use container" and, therefore, not be subject to the labeling requirements of Hazcom, the container must be used only to transfer a hazardous chemical from a labeled container, remain under the control of the person who transferred the substance, and only be used during the work shift in which the transfer takes place.
- c. Fuel tanks or other operating systems in a vehicle do not need to be labeled in accordance with this standard as they are not considered containers.

For example, liquid propane (LP) cylinders that serve as the source of fuel used to operate lift trucks, would not have to be labeled once the fuel tank is installed. Even though containers of fuel such as gasoline and LP clearly are within the scope of Hazcom, no requirement exists to label those containers operating the lift truck. The spare LP cylinder(s) in storage must be labeled since they are containers.

9. Scrap dealers. Scrap dealers are generally considered distributors and, to the extent that their products are not articles, they would NOT be exempt from the HCS.
 - a. If the company (supplier) providing the goods to the scrap dealer is furnishing articles which the supplier did not manufacture (such as a broken refrigerator), the supplier is not required to provide a label or SDS.
 - b. However, if a supplier sent a product that contained hazardous chemicals, as would be the case if a company scraps pipes containing a hazardous chemical or its residue, that could be released in more than small or trace quantities, present a physical hazard, or present a health risk, then the item is not an article. The supplier must provide a label and SDSs to the scrap dealer.
 - c. Similarly, manufacturers are also required to pass on any information (labels and SDSs) they have regarding known contaminants of the scrap, as would be the case if cutting fluids were present.
 - d. In addition, article manufacturers that sell for scrap those produced items that fail specification or suppliers who provide, for example, metal tailings from a manufacturing process, must develop and transmit SDSs and labels to downstream scrap dealers.
 - e. Generally, non-manufacturing scrap dealers may comply with the duty to provide labels and safety data sheets for the scrap they sell by sending their downstream users the labels and SDSs the dealer received from employers who have scrapped the materials.

E. Hazardous Chemicals Training.

1. Hazcom requires training of all employees exposed to hazardous chemicals. The content of the training is described in 1910.1200(h)(3).
2. Training need not be conducted on each specific chemical found in the workplace, but may be conducted by categories of hazards (e.g., carcinogens, sensitizers, acutely toxic

agents). This approach to training may be especially useful when training employees about the types of hazards they may encounter at another employer's worksite.

3. Employees who work in operations where they handle only sealed containers (such as warehousing) are potentially exposed to hazardous chemicals and, therefore, need access to information as well as training. The training required for employees who handle sealed containers is dependent upon the type of chemicals involved, the potential size of any spills or leaks, the type of work performed and what actions employees are expected to take when a spill or leak occurs.

F. Trade Secrets.

Hazcom allows for the withholding of certain information from a safety data sheet provided the claim can be supported, the properties and effects of the hazardous chemical is disclosed, the SDS indicates that the information being withheld is a trade secret; and, the information is made available to health professionals, employees and designated representatives as described in the standard. See paragraph 1910.1200(i) for further information.

G. Citation Guidelines/Hazardous Chemicals.

1. Cite 1910.1200(e)(1) if the employer has not developed a written Hazcom program. Do not penalize if all the elements of Hazcom are in compliance (labeling, SDS, chemical inventory, training) and the only deficiency is a written program.
2. Cite 1910.1200(h)(1) if training on hazardous chemicals is not provided before initial assignment or when new hazards were introduced into the workplace, or if the training in general was inadequate.
3. Cite 1910.1200(h)(2) if the employer did not provide the required information concerning the training program, the standard, and the operations where hazardous chemicals are present.
4. Cite 1910.1200(h)(3) if the employer did not provide training that covered the detection of hazardous chemicals, physical and health hazards of the chemicals, how employees should protect themselves, and the details of the hazard communication program, including GHS pictograms or the new SDS format.
5. Cite 1910.1200(h)(1) if former TQIs are not provided training before initial assignment or when new chemical hazards are introduced into the workplace. As this is a change after 30+ years of ERTK enforcement, do not penalize for first instance.
6. Usually no citation or penalty shall be proposed for 5206.0700, subpart 1(D) if records of training are not maintained or are incomplete (per CPL 2.111).
7. Cite 5206.0700, subpart 1(G) if annual update training is not provided.
8. Cite 1910.1200(f)(1) (shipped containers) if a *manufacturer, distributor, or importer* fails to ship a container with a GHS-compliant label.
9. Cite 1910.1200(f)(6) (workplace containers) for missing, inadequate, or illegible labels. Note that existing labels do not have to be replaced.
10. Cite 1910.1200(g)(1) if the employer does not have a SDS for each hazardous chemical in the workplace. Cite (g)(8) if the SDS are not readily accessible in the workplace.

11. Cite 1910.1200(g)(5) if a supplier or manufacturer fails to provide complete, accurate SDSs (see exceptions).

HARMFUL PHYSICAL AGENTS.

A. ERTK restricts coverage of harmful physical agents to only four (heat, noise, ionizing radiation, and non-ionizing radiation) because, by definition, harmful physical agents are those physical agents "determined by the commissioner **as part of the standard** for that agent to present a significant risk to worker health or safety or imminent danger of death or serious physical harm to an employee." In other words, to cover an agent under ERTK, a separate standard for that agent must be adopted. The four physical agents currently covered by ERTK include heat, noise, ionizing and non-ionizing radiation. Furthermore, employees must be routinely exposed to harmful physical agents at levels which approximate or exceed the permissible exposure limit or applicable action level to be covered by the ERTK training requirements.

1. **Heat.** Heat-related health problems result from a combination of internal (body) heat production from doing work and external heat exposure (environment). Heat disorders include heat stroke, heat exhaustion, heat cramps, fainting, and heat rash. Employee education is vital so that workers are aware of the need to replace fluids and salt lost through sweat; can recognize dehydration, exhaustion, fainting, heat cramps, salt deficiency, heat exhaustion, and heat stroke as heat disorders; and know the means of protecting themselves.

For general industry, the standard which makes heat subject to ERTK coverage is Minnesota Rule 5205.0110, subpart 1, "Temperature and Humidity Table." This standard is based on effective temperature, and considers season of the year and work activity. If the effective temperature limit is approached or exceeded, ERTK training requirements apply.

In construction, no specific heat standard has been adopted in the 1926 standards so heat as a harmful physical agent subject to ERTK training cannot be applied to construction. However, 1926.21(b) requires employers to "...instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." Training in the effects of heat and how to avoid heat stroke, heat exhaustion, etc., should be part of this training. If a construction employer has not included heat information in the training program provided to employees, a violation of 1926.21(b) exists.

2. **Noise.** Standards governing noise exposure exist for general industry (1910.95) and for construction (1926.52). These standards require employers to protect all workers from occupational noise exposure that exceeds an 8-hour time-weighted average (TWA) of 90 decibels (dBA). Employers must monitor noise exposure, institute control measures, and implement a hearing conservation program when exposures exceed an 8-hour TWA of 85 DBA. When noise levels meet or exceed the permissible limits established in these standards, ERTK training must be provided to educate employees in safe levels of noise, potential areas of over-exposure, effects of noise on their health, use of personal protective equipment, etc.
3. **Ionizing Radiation.** Federal OSHA Standards 1910.1096 and 1926.53 which cover ionizing radiation have been adopted by Minnesota OSHA. Whenever employee exposures approximate or exceed the exposure limits established by these standards, ERTK requirements for harmful physical agents must be met. Some of the most common uses of ionizing radiation occur in hospitals and dental offices with X-ray equipment and

radioactive sources for patient treatment and in general industry with non-destructive testing.

4. **Non-ionizing radiation.** Because Federal OSHA standards 1910.97 and 1926.54 have been adopted by Minnesota OSHA, certain frequencies of non-ionizing radiation are covered under ERTK. Whenever employee exposure is expected to approximate or exceed the exposure limit established by these standards, the ERTK training requirements must be met. Possible sources of non-ionizing radiation include lasers used in construction, radio frequency (RF) microwave heaters, and communications systems. [NOTE: UV and IR wave lengths are not included in 1910.97.]

B. Availability of Information and Labeling.

1. Manufacturers of equipment which generate a harmful physical agent must provide the purchasing employer with the information necessary for that employer to comply with the training requirements of 5206.0700, subpart 3. The information must be provided at the time of purchase and be current, accurate, and complete.
2. Employers must provide written information to employees who may be exposed to one or more of these physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or the applicable action level.
3. Employers must label equipment or work areas that generate harmful physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or applicable action level with at least the name of the physical agent and the appropriate hazard warning. For example, warning signs may be appropriate in areas where radiation exposure due to lasers is possible or in areas that are particularly hot or noisy.

C. Harmful Physical Agents Training.

1. Employers must conduct initial and on-going evaluations to determine if employees are routinely exposed to harmful physical agents at levels which approximate or exceed the permissible exposure limit or applicable action level and provide training to those employees.
2. Training must be provided so that it is understood by the employees and must include the information required by the standard for the agent or agents, including the following:
 - a. the name or names of the physical agent including any commonly used synonym;
 - b. the level, if known, at which exposure to the physical agent has been restricted or, if no standard has been adopted, according to guidelines established by competent professional groups;
 - c. the known acute (extremely severe, reaching crisis rapidly) and chronic (prolonged, lingering) effects of exposure at hazardous levels;
 - d. known symptoms;
 - e. appropriate emergency treatment;
 - f. known proper conditions for exposure to the physical agent;
 - g. the name, phone number, and address, if appropriate, of a manufacturer of the equipment which generates the harmful physical agent; and
 - h. a written copy of all of the above information which shall be readily accessible in the area or areas in which the harmful physical agent is present and where the employees may be exposed to the agent through use, handling, or otherwise.

D. Citation Guidelines/Harmful Physical Agents.

1. Cite 5206.0700, subparts 1 and 3, if training on harmful physical agents was not conducted or was incomplete. [For construction, cite 1926.21(b) for failure to provide training on heat exposure.] See CPL 2-2.1 for further instruction for noise violations.
2. Usually no citation or penalty shall be proposed for 5206.0700, subpart 1(D) if records of training are not maintained or are incomplete (per CPL 2.111).
3. Cite 5206.0700, subpart 1(G) if training is not provided before initial assignment, when new hazards are introduced into the workplace, or annual update training is not provided.
4. Cite 5206.1100 if areas or equipment that generate a harmful physical agent are not labeled or are inadequately labeled.
5. Cite 5206.0800, subpart 1, if written information on harmful physical agents is not available to employees.

INFECTIOUS AGENTS:

- A. Infectious agents apply to all employers who have employees potentially exposed to infectious agents. This means that infectious agents training must be provided by employers who have a first aid or first responder team, in correctional facilities and group homes, to firefighters and law enforcement personnel, etc.
- B. Infectious agents list.
 1. The list of infectious agents included in 5206.0600, subpart 4, includes the most common infectious agents that may be encountered in Minnesota. The list is compiled using information from the sources listed in subpart 3 and is reviewed by specialists in the Minnesota Department of Health before publication. The list is not all inclusive, however, and employers must still exercise reasonable diligence in evaluating their workplaces for the presence of other recognized infectious agents.
 2. The statutory definition of "infectious agents" limits infectious agents in 5206.0600, subparts 4 through 8, to bacterial, viral, fungal, parasitic, and rickettsial agents.
- C. Availability of Information.
 1. The written information requirement for infectious agents can be met if the employer makes reference documents available in work areas for employees' information. Documents such as "Control of Communicable Disease in Man" that provide all of the information required for infectious agents training (5206.0700, subpart 4) are acceptable as meeting this requirement.
- D. Infectious Agents Training.
 1. The information required to be presented as part of the training program for infectious agents was amended in 1992 to coincide with the training required for bloodborne pathogens under 1910.1030. This change allows employers to conduct one training program that covers all infectious agents and have that program satisfy the requirements of ERTK and 1910.1030.

NOTE: Although the construction employers are exempt from 1910.1030, they are not exempt from ERTK infectious agents training where it may apply.

2. ERTK requires training of all employees routinely exposed to infectious agents. Training does not have to be provided on all infectious agents but must cover the most commonly found agents. The training program must include:
 - a. a general explanation of the epidemiology and symptoms of infectious diseases including hazards to special at-risk employee groups;
 - b. an explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to infectious agents including blood and other infectious materials;
 - c. an explanation of the chain of infection, or infectious disease process, including agents, reservoirs, modes of escape from reservoir, modes of transmission, modes of entry into host, and host susceptibility;
 - d. an explanation of the employer's exposure control program;
 - e. an explanation of the use and limitations of methods of control that will prevent or reduce exposure including universal precautions, appropriate engineering controls and work practices, personal protective equipment, and housekeeping;
 - f. an explanation of the basis for selection of personal protective equipment, including information on the types, proper use, location, removal, handling, decontamination, and disposal of personal protective equipment;
 - g. an explanation of the proper procedures for cleanup of blood or body fluids;
 - h. an explanation of the recommended immunization practices, including, but not limited to the HBV vaccine and the employer's methodology for determining which employees will be offered the HBV vaccine, and the efficacy, safety, and benefits of being vaccinated;
 - i. procedures to follow if an exposure incident occurs, method of reporting the incident, and information on the post-exposure evaluation and medical follow-up that will be available;
 - j. information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
 - k. an explanation of the signs, labels, tags, or color coding used to denote biohazards;
 - l. an opportunity for interactive questions and answers with the person conducting the training session;
 - m. an accessible copy of the regulatory text of the ERTK standard and an explanation of its contents; and
 - n. how to gain access to further information and reference materials that must be made available in the workplace including the location, contents, and availability of pertinent materials that explain symptoms and effects of each infectious agent.

E. Citation Guidelines/Infectious Agents.

1. Cite 5206.0700, subparts 1 and 4, if infectious agents training was not conducted or was incomplete.
2. Usually no citation or penalty shall be proposed for 5206.0700, subpart 1(D) if records of training are not maintained or are incomplete (per CPL 2.111).
3. Cite 5206.0700, subpart 1(G) if training is not provided before initial assignment, when new hazards are introduced into the workplace, or annual update training is not provided.
4. Cite 1910.1030(g)(2)(I) if infectious agents training was conducted but bloodborne pathogens training was not done.
5. Cite 5206.0800, subpart 1, if written information on infectious agents was not available to employees.

F. Citation Guidance for both Hazcom/RTK violations

When employees are exposed to hazardous chemicals **and** harmful physical agents or infectious agents and the employer has not complied with the training or written program requirements, citations will be proposed separately except as described below. Employers may include harmful physical agents and infectious agents in their Hazcom program or prepare a separate program.

1. Cite 5206.0700 subp. 1(G) for all deficiencies in annual training requirements.
2. Cite 5206.0700 subp. 1(D) for all deficiencies in training records.
3. Cite 5206.0700 subp. 1(A) if the employer fails to allow employees the time to attend any of the required ERTK or Hazcom training (i.e., incurs any cost to attend)

INTERFACE WITH OTHER STANDARDS:

In some cases, an employer's duties under other OSHA standards coincide with requirements of ERTK resulting in simplified compliance.

- A. Medical Records Access. The Access to Employee Exposure and Medical Records standard (1910.1020) and Hazcom/ERTK overlap with regard to SDSs. SDSs are specifically identified as exposure records under 1910.1020(c)(5)(iii). Each SDS received by an employer must be maintained for at least 30 years as required by 1910.1020(d)(1)(ii). However, the access standard does offer an alternative to keeping the SDSs in 1910.1020(d)(1)(ii)(B). SDSs or other records concerning the identity of a substance or agent need not be retained for any specified period as long as 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. To simplify the maintenance of this information, an employer may wish to include information on where chemicals were used and when they were used on the hazardous substance list that is part of their Hazcom/ERTK programs. This list, then, can be kept for 30 years to meet the retention requirements of 1910.1020.
- B. Occupational Exposure to Hazardous Chemicals in Laboratories. Quality control laboratories are usually part of production operations and are not covered under the Laboratory Standard (1910.1450), but must comply with Hazcom. Other laboratories covered by 1910.1450 are exempt from Hazcom/ERTK. See 1910.1200(b)(3) for the application of 1910.1200 to laboratories.
- C. Hazardous Waste Operations and Emergency Response. The scope and extent of training regarding emergency procedures and emergency response will depend upon the response of employees to an emergency. If the employer intends to evacuate the work area, the training in emergency procedures can be quite simple but should include information on the emergency alarm system and evacuation routes. However, if employees are expected to take action to moderate or control the emergency, then additional training will be required. At a minimum, training should include appropriate personal protective equipment, leak and spill cleanup, decontamination, shut-down procedures, and where to go in an emergency. See 29 CFR 1910.120 for further information on post-emergency response training.
- D. Occupational Exposure to Bloodborne Pathogens. Bloodborne pathogens are one type of infectious agent. Employers who must develop and implement an exposure control plan as required by the Bloodborne Pathogens Standard (1910.1030) may extend that plan to include similar information for all infectious agents to which employees are actually or potentially exposed. Exposure control plans that meet the requirements of 1910.1030 and cover all infectious agents will be considered as meeting the intent of ERTK. If the exposure control plan is a separate document from the employer's ERTK program, a reference to the plan should be made in the ERTK program.

- E. Other Health Standards. Labeling and training requirements in substance-specific standards take precedence over the labeling and training requirements of Hazcom. For example, the ethylene oxide (ETO) standard has a different labeling requirement than Hazcom. Standards, such as the expanded health standards, which have different requirements shall be cited independently from Hazcom.

James Krueger, OMT Director for the OSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachments: Appendix A--Materials Commonly Used in Construction
Appendix B--Guide for Reviewing SDS Completeness

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.

**APPENDIX A
MATERIALS COMMONLY USED IN CONSTRUCTION**

Material Class	PHYSICAL HAZARDS		HEALTH HAZARDS		
	Flammables/ Combustibles	Compressed Gas	Respiratory	Irritant	Corrosive
Carbon Monoxide			X		
Cleaning Solvents	X		X		
LP GAS	X	X			
Lye, hydroxides					X
Mastics and Adhesives glues	X		X	X	
Motor oils, hydraulic fluids, gasoline	X			X	
Muriatic sulfuric, hydrochloric, acids					X
Nuisance dust, Particulates			X	X	
Oxygen acetylene, nitrogen	X	X			
Pipe Joint Compound PVC cements	X		X	X	
Portland Cement mortars, related ingredients				X	X
Sealants	X		X	X	
Silica, abrasives			X		
Soldering fumes, Lead	X		X		
Solvent Based Paint, thinners, strippers	X		X		
Welding fumes, rod contents, effects of rays	X		X	X	

APPENDIX B

GUIDE FOR REVIEWING SDS COMPLETENESS

NOTE: This guide is an optional aid for reviewing SDSs during inspections.

During OSHI review of safety data sheet (SDS) completeness, the following questions should be considered:

1. Are all sections of the SDS completed?

NOTE: After June 1, 2015, all blocks in sections 1-11 and 16 on the SDS must be completed and employers must follow the format prescribed in 1910.1200-

2. Do chemical manufacturers and importers have an SDS for each hazardous chemical produced or imported into the United States?

NOTE: Chemical manufacturers, distributors, and importers who choose to purchase data sheets for their products from information services, rather than developing the SDS themselves, retain responsibility for providing the sheets and for assuring their accuracy.

3. Do employers have an SDS for each hazardous chemical used?

NOTE: Employers who in good faith choose to rely on the SDSs provided to them by the chemical manufacturer or importer assume no responsibility for their contents. They are, however, responsible for assuring that all required information is included on the SDS.

4. Is each SDS in at least English?

NOTE: This requirement is intended to prevent importers from transmitting SDSs written in a foreign language. It does not prohibit the translation of SDSs into foreign languages to aid employee understanding.

5. Does the SDS include at least the following, and in the following sequence:

- a. Section 1 of the SDS requires identification (same as that found on the label)
- b. Section 2 of the SDS requires hazard identification
- c. Section 3 of the SDS requires composition/information on ingredients
- d. Section 4 of the SDS requires first-aid measures
- e. Section 5 of the SDS requires fire-fighting measures
- f. Section 6 of the SDS requires accidental release measures
- g. Section 7 of the SDS requires handling and storage information
- h. Section 8 of the SDS requires exposure controls/personal protection information
- i. Section 9 of the SDS requires physical and chemical properties information (such as flashpoint, vapor pressure)
- j. Section 10 of the SDS requires stability and reactivity information
- k. Section 11 of the SDS requires toxicological information (health hazards, signs and symptoms of exposure, routes of entry, PELs)
- l. Section 12 of the SDS requires ecological information, but won't be enforced by OSHA
- m. Section 13 of the SDS requires disposal information, but won't be enforced by OSHA

- n. Section 14 of the SDS requires transport information, but won't be enforced by OSHA
 - o. Section 15 of the SDS requires regulatory information, but won't be enforced by OSHA
 - p. Section 16 of the SDS requires other information, such as the date of preparation, or last revision.
6. New or significant information must be added to the SDS within three months.

[Reference: Federal OSHA Instruction CPL 02-02-038]