Starting in 2012, OSHA began phased implementation of a new Hazard Communication Standard (HCS) aligned with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS); the standard is fully implemented as of June 1, 2015. Much of the standard focuses on hazard communication through the development of Safety Data Sheets (SDSs), which replace previous Material Safety Data Sheets (MSDSs). Numerous informational sources are available regarding the development and distribution of SDSs.

As with any regulation, each company must conduct its own due diligence in determining its compliance obligations associated with meeting OSHA’s GHS-HCS.

The rationale for OSHA’s new GHS-HCS is to ensure that workers understand and can identify potential hazards associated with the use of or exposure to chemical materials in the workplace. Although the general premise of the standard has not changed, the types of hazards identified and the way those hazards are communicated has. The revisions aim to ensure that true potential hazards are identified, helping to minimize workplace complacency associated with MSDS over-warning.

With regards to asphalt pavement mix and the new standard, it is recognized that the material composition of asphalt pavement mix has remained fairly consistent over the past decade or two and that any potential hazards associated with working with the material have likewise remained similar, if not reduced due to advances in manufacturing and application technologies, such as warm-mix asphalt and paver engineering controls. Indeed, it has been well documented that occupational exposure to emissions from asphalt pavement material has been reduced by more than 50 percent since the 1990s.

Under OSHA’s new GHS-HCS, chemical manufacturers are required to “classify” the hazards of the materials or chemicals they produce. Asphalt pavement mix would be considered a “chemical,” according to OSHA’s definition. Different from the prior HCS, GHS-HCS focuses on identifying and quantifying certain “classes” of hazards. NAPA provides guidance to assist companies in navigating these determinations (https://goaspha.it/2ABmWkK). It is worth
noting that different manufacturers and producers may come to different conclusions about the hazard classifications of similar materials, including asphalt pavement mix, which they produce.

**Distributing SDSs**

If a chemical or material is classified as hazardous under the GHS, the manufacturer must provide and distribute information regarding the hazards of the material. There are specific requirements for the distribution of SDSs and labels. SDSs are generally required to be provided with the first shipment of the hazardous chemical or available via other means. Labels are generally required to be transmitted with the hazardous chemical's packaging.

Conversely, if any chemical or material, including asphalt pavement mix, is not classified as hazardous under OSHA’s new GHS-HCS program, there appears no further requirement to maintain, transmit, or otherwise distribute information regarding the materials’ characteristics and potential hazards. OSHA does recognize that SDSs are distributed for purposes other than identifying classified hazards; but, according to OSHA, such informational sheets are outside the framework of its HCS program.

Also, OSHA has consistently stated that, under 29 CFR 1910.1200(g)(8) of the standard, employers are neither required nor encouraged to maintain MSDSs for non-hazardous chemicals. This paragraph was not materially changed with the GHS revisions of HCS, and therefore there remains no requirement for materials “not classified” as hazardous to have an SDS. Similarly, regarding the distribution of SDSs, OSHA’s letter of interpretation states “MSDSs that represent non-hazardous chemicals are not covered by the HCS” and the requirements set-forth in OSHA’s HCS standard do not necessarily apply. Likewise with regards to labeling, per 29 CFR 1910.1200(f)(1) of the standard, “[h]azards not otherwise classified do not have to be addressed on the container.”

Regardless, if a manufacturer does develop an SDS that identifies a material as “not-classified”, i.e., non-hazardous, it is prudent to distribute/transmit that SDS or warning label upon customer request and/or as is appropriate.

**GHS-HCS Communications Compliance**

The steps identified below should assist asphalt pavement mix producers in complying with the communication portion of the GHS-HCS. Each company must determine:

1) Whether or not asphalt pavement mix is classified as a dangerous or hazardous material (https://goaspha.lt/2ABmWkK);
2) Whether or not an SDS should be developed for the material;
3) Whether or not the material’s SDS should be distributed; and
4) The manner of distributing any product SDS or label, if so required.
**Bottom Line**

If a company identifies an asphalt pavement mix as “not classified” as hazardous, the company must then determine the appropriate distribution of any corresponding SDS or product warning label, because it appears that neither an SDS nor a label would be strictly required under the GHS-HCS for non-hazardous or “not classified” materials. However, it is always prudent to provide and communicate appropriate warning information regarding potential hazards of any product.

For example, an SDS for asphalt pavement mix, even if “not classified” as hazardous under the GHS, may still identify potential irritation and thermal burns that could occur from working with the material. Although these types of hazards might not rise to the level that requires classification under OSHA’s GHS-HCS, it still may be prudent to warn those working with the material of these potential hazards. An SDS is an excellent tool for doing that.

The GHS-HCS, which is fully implemented as of June 1, 2015, should not substantially change the manner in which a company previously communicated the potential hazards of asphalt pavement mix compared to how a company will communicate these hazards post GHS implementation. If a company’s asphalt pavement mix was or will be classified as hazardous/dangerous, there are certain compliance obligations specified for distribution of SDSs and labels. If a company’s asphalt pavement mix was or will be classified as non-hazardous, i.e., “not-classified,” there appears little formal requirement regarding the distribution of SDSs or labels. Each individual company should determine whether and how to distribute such information on a case-by-case basis.

**For more information, contact NAPA Vice President for Environment, Health & Safety, Howard Marks, Ph.D., J.D., MPH at hmarks@asphaltpavement.org or 301-731-4748.**

**References**

6. ibid.