

**MIOSHA Act 154,
Part 42. Hazard Communication for Construction,
Part 92. Hazard Communication for General Industry,
Part 430. Hazard Communication for Occupational Health**

FORWARD

BACKGROUND TO MICHIGAN'S RIGHT TO KNOW LAW & HAZARD COMMUNICATION STANDARDS

The Michigan Occupational Safety and Health Act (MIOSHA) was amended in 1986 to include requirements for the communication of information regarding the safe handling of hazardous chemicals present in Michigan workplaces. These amendments were called the Michigan Right To Know Law. The amendments also enabled the adoption of the federal Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard (29 CFR 1910.1200), which was designed to make information available to employees exposed to hazardous chemicals in their workplaces.

Sections of the Michigan Right To Know Law of particular importance address the following employer responsibilities:

- Posting the location of material safety data sheets (MSDS's).
- Posting the receipt of a newly received or revised MSDS no later than five (5) working days after its receipt.
- Identifying the contents of pipes or piping systems which contain a hazardous chemical.

Additionally, the law discusses the employee's right to request MSDSs from their employers. Employees are also afforded protection from any discrimination or discharge resulting from the request of information regarding hazardous chemicals under the law.

The Federal Hazard Communication Standard adopted by the law addressed the following major components:

- Evaluation of hazardous chemicals (development of MSDSs)
- Written hazard communication programs
- Labeling of hazardous chemicals
- Maintaining MSDSs
- Employee information and training
- Trade secrets

In 1994, federal OSHA amended the Hazard Communication Standard (29 CFR 1910.1200) and, effective June 19, 1995, Michigan adopted the amended federal standard by reference. The amendments essentially added clarifying language, two new sections, and a new appendix to the standard.

The new advisory appendix E was included to provide employers who do not import or produce chemicals with a guide to help them determine their compliance obligations under the standard (29 CFR 1910.1200). The first new section addresses the retention of United States Department of Transportation (DOT) markings, placards, and labels. The second new section mandates that the following federal standards shall apply to agricultural operations:

- 29 CFR 1910.142 Temporary labor camps (Part 511)
- 29 CFR 1910.111(a) & (b) Storage and Handling of Anhydrous Ammonia (Part 78)
- 29 CFR 1910.266 Logging operations (Part 51)
- 29 CFR 1910.145 Slow-moving vehicles (Part 37)
- 29 CFR 1910.1200 Hazard Communication (Part 42, 92, & 430)
- 29 CFR 1910.1201 Retention of DOT markings, placards and labels.

This document has three important parts containing information regarding Michigan's Right To Know Law and the enforcement of hazard communication regulations in Michigan.

The first includes those sections of the MIOSHA Act which contain provisions to the Michigan Right To Know Law.

The second part comprises the first three rules of the Michigan Hazard Communication Standards promulgated by the Construction Safety Standards Commission, the General Industry Safety Standards Commission, and the Occupational Health Standards Commission. These first three rules of each standard each adopt the amended Federal Hazard Communication Standard and federal regulations regarding the retention of DOT markings, placards, and labels by reference.

The third part contains the newly amended Federal OSHA Hazard Communication Standard. This is not the same as the hazard communication standard adopted by section 14(a)(1) of the MIOSHA Act as amended.

The MDELEG also maintain additional information pertaining to the development of an effective hazard communication program in your workplace. For further assistance or questions regarding the Michigan Right To Know Law or the Michigan Hazard Communication Standard, call or write to the following division:

Michigan Department of Energy, Labor & Economic Growth.
Michigan Occupational Safety and Health Agency (MIOSHA)
Consultation Education and Training Division
P.O. Box 30643
Lansing, Michigan 48909-8143
(517) 322-1809

**ACT 154 AMENDMENTS
ACT NO. 80 OF THE PUBLIC ACTS OF 1986
EFFECTIVE APRIL 7, 1986**

AN ACT to amend the title and sections 5, 11, 31, and 63 of Act No. 154 of the Public Acts of 1974, entitled "An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; and to repeal certain acts and parts of acts," section 11 as amended by Act No. 51 of the Public Acts of 1980, being sections 408.1005, 408.1011, 408.1031, and 408.1063 of the Michigan Compiled Laws; and to add sections 14a, 14b, 14c, 14d, 14e, 14f, 14g, 14h, 14i, 14j, 14k, 14l, and 14m.

The People of the State of Michigan enact:

Section 1. The title and sections 5, 11, 31, and 63 of Act No. 154 of the Public Acts of 1974, section 11 as amended by Act No. 51 of the Public Acts of 1980, being sections 408.1005, 408.1011, 408.1031, and 408.1063 of the Michigan Compiled Laws, are amended and sections 14a, 14b, 14c, 14d, 14e, 14f, 14g, 14h, 14i, 14j, 14k, 14l, and 14m are added to read as follows:

TITLE

An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and

agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; and to repeal certain acts and parts of acts.

Sec. 5. (1) "Employee" means a person permitted to work by an employer.

(2) "Employer" means an individual or organization, including the state or a political subdivision, which employs 1 or more persons.

(3) "Imminent danger" means a condition or practice in a place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided. A container of an unknown and unlabeled chemical or a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a shall be considered an imminent danger after meeting the provisions of section 31.

(4) "Inspection" means the examination or survey of a place of employment to detect the presence of an existing or potential occupational safety or health hazard or to determine compliance with this act, rules or standards promulgated, or orders issued pursuant to this act.

(5) "Investigation" means the detailed evaluation or study of working conditions, including equipment, processes, substances, air contaminants, or physical agents with respect to the actual or potential occurrence of occupational accidents, illnesses, or diseases.

Sec. 11. An employer shall:

(a) Furnish to each employee, employment and a place of employment which is free from recognized hazards that are causing, or are-likely to cause, death or serious physical harm to the employee.

(b) Comply with this act and with the rules and standards promulgated and the orders issued pursuant to this act.

(c) Post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act, including applicable rules and standards.

(d) Provide personal protective equipment at the employer's expense when it is specifically required to be provided at the employer's expense in a rule or a standard promulgated by a standards promulgating commission. When promulgating a rule or a standard concerning personal protective equipment, the standards promulgating commission shall use at least the following criteria in determining who should pay for the equipment:

(i) Whether the equipment is transferable between employees.

(ii) Whether the equipment is maintained by the employer.

(iii) Whether the equipment generally remains at the work site after the work activity has been completed.

(iv) The amount of personal use involved with the equipment.

(v) Any other criteria deemed applicable by the standards promulgating commission.

Sec. 14a. (1) The occupational safety and health hazard communication standard that has been adopted or promulgated by the United States department of labor and has been codified at 29 C.F.R. 1910.1200 as of the effective date of the amendatory act that adds this section is incorporated by reference and shall have the same force and effect as a rule promulgated pursuant to this act. In addition to the standard incorporated by reference in this subsection, sections 14b to 14l shall apply to an employer subject to this act. The applicability of the standard incorporated by reference in this subsection and of sections 14b to 14l is subject to subsections (4),(5),(6), and (7).

(2) When a rule or standard that is continued pursuant to section 24(3) is in conflict with or covers the same or similar subject as a standard incorporated by reference pursuant to subsection (1), the federal standard so incorporated by reference shall govern, and the state rule or standard continued pursuant to section 24(3) is rescinded;

(3) The department of labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational safety. The department of public health shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational health. The departments of public health and labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) in a manner that is consistent with the administration and enforcement of the standard by the federal occupational safety and health administration.

(4) Beginning November 25, 1985, employers who are chemical manufacturers in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget, importers, and distributors shall label containers of hazardous chemicals leaving their workplaces, provide material safety data sheets with initial shipments, and otherwise comply with any applicable provision of the standard incorporated by reference pursuant to subsection (1) and of sections 14b to 14l. A chemical manufacturer, importer, or distributor subject to this subsection shall provide a material safety data sheet and an appropriately labeled container to each employer in this state, regardless of the employer's standard industrial classification in the standard industrial classification code, who purchases a hazardous chemical.

(5) Beginning May 25, 1986, an employer in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace.

(6) Beginning February 25, 1987, an employer who is subject to this act but who is not otherwise specifically described in subsections (4) and (5) shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace. However, instead of complying with any conflicting provision of the standard incorporated by reference in subsection (1), an employer who is described in this subsection is required:

(a) To provide information and training only to employees who are exposed to hazardous chemicals in the normal course of employment or who are likely to be exposed to hazardous chemicals in the event of an emergency.

(b) In the case where a hazardous chemical is mixed or combined with any other chemical or hazardous chemical by the employer, to maintain and provide a material safety data sheet for each constituent hazardous chemical and to maintain a material identification system that identifies to employees the appropriate material safety data sheets.

(7) The standard incorporated by reference in subsection (1), this section, and sections 14b to 14l shall not be construed to require an employer in a standard industrial classification other than 20 through 39 of the standard industrial classification code published by the federal department of management and budget to evaluate chemicals, to develop labels for containers of hazardous chemicals, or to develop material safety data sheets.

Sec. 14b. In nonemergency situations, a chemical manufacturer, importer, or employer

claiming a trade secret, upon request, shall disclose a specific chemical identity, otherwise permitted to be withheld under the standard incorporated by reference in section 14a, in addition to a health professional as specified in 29 C.F.R. 1910.1200(i)(3), to an occupational health nurse providing medical or other occupational health services to exposed employees, to an authorized employee representative of an exposed employee, and to an exposed employee, if the occupational health nurse, the representative, and the employee comply with the requirements described in 29 C.F.R. 1910.1200(i)(3) and (4).

Sec. 14c. Pipes or piping systems in a workplace that contain a hazardous chemical shall be identified to an employee by a label or by a sign, placard, written operating instructions, process sheet, batch ticket, or a substance identification system that conveys the same information required to be displayed on a label by the standard incorporated by reference in section 14a. The employer shall provide at least 1 label, sign, placard, set of written operating instructions, process sheet, batch ticket, or a substance identification system selected by the employer and readily accessible to each employee at a location in the workplace designated by the employer. The employer shall establish a pipe and stationary process container entry procedure that will assure that the information required by 29 C.F.R. 1910.1200(f) is conveyed to an employee before entry. The requirements of this subsection shall apply in addition to the occupational safety and health hazard communication standard incorporated by reference in section 14a.

Sec. 14d. (1) Upon request of the director of the department of public health, an employer who claims a trade secret under the standard incorporated by reference by section 14a shall support the trade secret claim. Subject to subsection (2), the director shall consider the following factors in determining whether a specific chemical identity may be withheld as a trade secret:

(a) The extent to which the information is known outside the employer's business.

(b) The extent to which it is known by employees and others involved in the employer's business.

(c) The extent of measures taken by the employer to guard the secrecy of the information.

(d) The value of the information to the employer and the employer's competitors.

(e) The amount of effort and money expended by the employer in developing the information.

(f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

(2) The determination made by the director under subsection (1) shall not uphold as a trade secret any chemical identity information that is readily discoverable through reverse engineering.

(3) This section shall not be construed to require the prior approval of trade secret claims by the director of the department of public health or the director of the department of labor.

(4) An exposed employee, a health professional providing medical or other occupational health services to exposed employees, or an authorized employee representative of an exposed employee may petition the director of the department of public health to review a denial of a written request for disclosure of a specific chemical identity. This review shall be conducted as a contested case pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall be confidential. The director shall review the assertion of trade secrecy and make a determination in accordance with the principles provided in this section and the standard incorporated by reference in section 14a. In preparing the final order, the director shall consider and require any prudent measures necessary to protect the health of employees or the public in general while maintaining the confidentiality of any trade secrets.

(5) The director of public health may revoke any order entered under subsection (4) upholding a trade secret claim after a hearing involving the parties of interest upon showing that a party has not complied with an order issued pursuant to subsection (4).

(6) Records and information obtained by any department, commission, or public agency related to a review by the director of public health under subsection (4) and to information determined by the director to be a trade secret in that review shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(7) Notwithstanding that information has been claimed as a trade secret pursuant to 29 C.F.R. 1910.1200(i) or has been upheld by the director as a trade secret pursuant to this section, a chemical manufacturer, importer, or employer shall provide the specific chemical identity and percentage composition of a hazardous chemical to the director of public health when the director requests that information in the discharge of the director's duties under this act.

Sec. 14e. In order to educate employers, employees, and the public about the hazards of exposure to hazardous chemicals and the requirements of the occupational safety and health hazard communication standard incorporated by reference in section 14a and the requirements of sections 14b to 14l, the departments of public health and labor shall distribute periodically public service announcements to newspapers and television and radio stations throughout this state.

Sec. 14f (1) An employer engaged in agricultural operations is not required to comply with the standard incorporated by reference in section 14a or sections

14b to 14l for a hazardous chemical that is regulated under the insecticide, fungicide, and rodenticide act, 7 U.S.C. 136 to 136y, or the pesticide control act, Act No. 171 of the Public Acts of 1976, being sections 286.551 to 286.581 of the Michigan Compiled Laws, and any rules or regulations promulgated under those acts.

(2) The director of the department of agriculture at least annually shall certify to the department of public health a list of chemicals regulated by the acts described in subsection (1).

Sec. 14g. An employer is not required to comply with the standard incorporated by reference in section 14a or with sections 14b to 14l with respect to a chemical in a sealed package and in transit by a common carrier if the seal remains intact while in transit.

Sec. 14h. An employer engaged in construction operations may satisfy the requirements of the standard incorporated in section 14a and sections 14b to 14l that a material safety data sheet be maintained for each hazardous chemical in the workplace by maintaining material safety data sheets in 1 or more central locations at a job site.

Sec. 14i. The chief of each organized fire department shall prepare and disseminate to each fire fighting employee of the organized fire department a plan for executing the department's responsibilities with respect to each site within the organized fire department's jurisdiction where hazardous chemicals are used or produced.

Sec. 14j. An employer subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall post signs throughout the workplace advising employees of all of the following:

(a) The location of the material safety data sheets for the hazardous chemicals produced or used in the workplace and the name of the person from whom to obtain the sheets.

(b) That the employer is prohibited from discharging or discriminating against an employee who exercises the rights regarding information about hazardous chemicals in the workplace afforded by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(c) That, as an alternative to requesting the employer for a material safety data sheet for a hazardous chemical in the workplace, the employee may obtain a copy of the material safety data sheet from the department of public health. The sign shall include the address and telephone number of the division of the department of public health that has the responsibility of responding to such requests.

Sec. 14k. (1) An employer who is subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall organize the material safety data sheets for the hazardous chemicals in the

workplace in a systematic and consistent manner and shall train employees in locating particular material safety data sheets.

(2) Not later than 5 working days after receipt of a new or a revised material safety data sheet, the employer shall post for a period of 10 working days a notice of the existence of the new or revised sheet and directions for locating the new or revised sheet according to the method used by the employer for organizing material safety data sheets.

Sec. 14l. The failure of an employer who is subject to the standard incorporated by reference in section 14a and to this section and sections 14b to 14k to provide an exposed employee with access to the most current material safety data sheet available to the employer shall not be considered by the department as a violation for which a de minimis notice of violation may be issued under section 33(5). The department may consider such a violation to be a serious violation or a violation not of a serious nature for which a citation may be issued under section 35.

Sec. 14m. The standard incorporated by reference in section 14a and sections 14b to 14l occupy the entire field of regulation of occupational safety and health with respect to hazardous chemicals in the workplace. Except as specifically provided in this act, any provision of any ordinance, law, rule, regulation, policy, or practice of a city, township, village, county, governmental authority created by statute, or other political subdivision of the state that imposes any requirement on an employer or expands the rights of an employee with respect to the communication of the hazards of hazardous chemicals in the workplace shall be considered in conflict with this act and shall not be enforceable.

Sec. 31. (1) When and as soon as a department representative determines that an imminent danger exists in a place of employment, the department representative shall inform the employer and the affected employees of a determination of the imminent danger. The department representative immediately shall recommend to the appropriate department director that an order be issued to require that steps be taken as may be necessary to avoid, correct, or remove the imminent danger. After receiving authorization for the issuance of an order from the appropriate department director, the department representative shall apply a tag to the equipment or process which is the source of the imminent danger identifying that an imminent danger exists. The tag shall be removed only by the department representative. At request of the employer, an area supervisor shall, within 24 hours after a request, make an on site review of any tagging and recommend continuance or removal. The order shall prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove

the imminent danger in a safe and orderly manner. In tagging the equipment or process which is the source of imminent danger and in issuing the order, consideration shall be given to any necessity to maintain the capacity of a continuous process operation and to the reestablishment of normal operations without a complete cessation of operations.

(2) An employer shall not permit an employee, other than an employee whose presence is necessary to avoid, correct, or remove the imminent danger, to operate equipment or engage in a process which has been tagged by the department and which is the subject of an order issued by the department identifying that an imminent danger exists. An employee who suffers a loss of wages or fringe benefits or is in any manner discriminated against for refusing to operate equipment or engage in a process which has been tagged by the department and which is the subject of an order issued by the department, as provided in this section, may file a discrimination complaint, and the department of labor may order appropriate relief as provided in section 65. This section does not prohibit an employer from assigning an employee to an operation not affected by the imminent danger situation, subject to any collective bargaining agreement.

(3) Upon failure of the employer to promptly comply with a department order, as described in subsection (1), the appropriate department shall petition the circuit court having jurisdiction to restrain a condition or practice in a place of employment which the department determines causes the imminent danger.

(4) If the department arbitrarily or capriciously fails to seek relief under this section, an employee who may be injured by reason of the failure, or the representative of those employees, may bring action against the department in the circuit court having jurisdiction for a writ of mandamus to compel the department to seek an order and for further relief, as may be appropriate.

(5) The department of public health or the department of labor shall respond within 24 hours after receipt of an imminent danger complaint concerning an unknown and unlabeled container of chemicals or an imminent danger complaint

concerning a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(6) Before a department representative seeks authorization to issue an order pursuant to the procedures prescribed in subsection (1), an employer shall be given a reasonable opportunity to identify, label, or provide the material safety data sheet for the container which is the subject of the imminent danger determination.

Sec. 63. (1) Information reported to or otherwise obtained by the department of labor or the department of public health, in connection with an inspection, investigation, or proceeding under this act that contains or that might reveal a trade secret, including information required to be made available under sections 14a through 14l and section 24(9) and (10), shall be considered confidential. In a proceeding under this act, the department of public health shall promulgate rules for the purpose of protecting trade secrets regarding information required to be made available under sections 14a through 14l and section 24(9) and (10), and the appropriate department, the board, or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets and to carry out the objectives of this act .

(2) Except as otherwise provided by this subsection and subsection (1), information reported to or otherwise obtained by a department from an employee in connection with an inspection, investigation, or proceeding under this act shall be made available to the public pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The identity of an employee or any information that may lead to the identification of an employee who provides information pertaining to a possible violation or violations of this act shall be exempt from disclosure.

Section 2. Section 11 shall take effect May 25, 1986

This act is ordered to take immediate effect.

1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being 408.1001 et. seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143.

R 408.44203 Retention of department of transportation markings, placards, and labels; adoption by reference; availability.

Rule 4203. (1) The federal occupational safety and health administration's regulations on retention of department of transportation markings, placards, and labels which have been promulgated by the United States department of labor and codified at 29 C.F.R. 1926.61 and 1928.21 and which were published in the Federal Register on July 19, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being 408.1001 et seq. of the Michigan Compiled Laws.

The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143.

No comparable OSHA provision.

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