A new directive from the Occupational Safety and Health Administration on enforcing the agency's Hazard Communication (HazCom) standard describes requirements that appear to impose new, unforeseen paperwork and compliance burdens on employers even while providing useful clarifications on some issues for employers and enforcement personnel. The "Inspection Procedures for the Hazard Communication Standard (HCS 2012)" was released July 20, 2015, and explains how the standard is to be enforced during the current transition period and after the standard is fully implemented. OSHA's HazCom rule was amended in 2012 to align U.S. HazCom mandates with a globally harmonized system of classifying and labeling hazardous chemicals.

Observers identified at least three areas of concern about the new policy. They involve requirements for documentation of good-faith compliance efforts, written HazCom program instructions, and procedures for classifying chemicals. Critics believe they could lead to added costs, including from citations.

According to the directive, inspectors are to determine if all applicable provisions of paragraphs (e) through (h) of the standard have been covered in the written program and implemented in the workplace. These provisions include the chemical inventory, which must show a product identifier for each chemical known to be present that aligns with the Safety Data Sheet (SDS) and label. The inventory is to include chemicals present in storage or otherwise not in use.

In addition, the written program must designate the person(s) responsible for obtaining or maintaining SDSs, how the data sheets are to be maintained, procedures on how to retrieve SDSs electronically, including backup systems to be used in the event of failure of the electronic equipment, and how employees obtain access to SDSs. Also required are procedures addressing what to do if an SDS is not received at the time of the first shipment, if there is reason to believe the SDS is not appropriate (e.g., missing hazards), to determine if the SDS is current, and, for chemical manufacturers or importers, for updating the SDS when new and significant health information is found. In addition to the written program, there are detailed requirements for labeling, training, evaluating chemicals, and much more.

OSHA appears to be using the policy to push enforcement priorities at the agency. It is a means of requiring staffing firms that provide temporary employees to train those employees to protect themselves from hazardous chemicals they may encounter at the host employer's worksite. Inspectors also are given detailed guidance on how to evaluate an SDS for a general duty clause violation in cases where there is potential exposure to a chemical with no permissible exposure limit ("PEL"). Frustrated with its inability to update outdated PELs, OSHA has long-hinted it would use the general duty clause in this way.

“They are clearly encompassing their enforcement initiatives into this directive,” said Jackson Lewis attorney Tressi Cordaro. “The approach not only lacks any legal basis in the standard or in OSHA’s governing statute, but also circumvents the regulatory process. That is rulemaking without notice and comment,” she contended.

Cordaro noted that the directive provides useful clarification on some issues, such as employer reliance on Department of Transportation (DOT) labeling for shipping of hazardous chemicals. “There’s some value in this directive. OSHA gave some clarification to DOT labeling,” she said. “That’s guidance that was needed in the industry.”
Enforcement of the standard is in transition. Employers were required to train workers on the new label elements and safety data sheets by December 1, 2013. Chemical manufacturers, importers and distributors had to comply with revised SDS requirements by June 1, 2015. Manufacturers and importers had to comply with new labeling provisions by June 1, 2015. Distributors have until December 1, 2015, to comply with labeling provisions as long as they are not relabeling materials or creating SDSs, in which case they must comply with the June 1 deadline. Full implementation begins on June 1, 2016.