

**FISCAL AND REGULATORY IMPACT ANALYSIS FOR ADOPTION OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH
HAZARD COMMUNICATION STANDARD AMENDMENTS TO 29 CFR 1910**

Submitted to OSBM on Date: July 31, 2024

Agency: North Carolina Department of Labor (NCDOL)

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Rule related to:

Occupational Safety and Health Division (OSH) Verbatim Adoption of federal OSHA Standards

Authority: § 95-131. Development and promulgation of standards; adoption of federal standards and regulations.

- (a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.¹

Additional Statutory Authority: NCGS §§ 95-130; 95-131; 95-133; 95-136; 95-137

Occupational Safety and Health Act of North Carolina, Article 16 of Chapter 95; NCGS § 95-110.5. Powers and duties of Commissioner.

NC Administrative Code Rule proposed for amendment: 13 NCAC 07F .0101 GENERAL INDUSTRY (see Appendix A for proposed rule text)

Federal Rule: <https://www.federalregister.gov/documents/2024/05/20/2024-08568/hazard-communication-standard>; actual amendments to 29 CFR 1910 begin on page 44357 of 89 Federal Register 44144.

The final federal amendment to the existing Hazard Communication standard at 29 CFR 1910 became effective July 19, 2024. Federal OSHA requires that State Plan states adopt verbatim all federal standards or adopt a standard that is as effective as the federal standard.

¹ copied in part: [G.S. 95-131 \(ncleg.gov\)](https://www.ncleg.gov)

History of the Hazard Communication Standard in North Carolina

Federal OSHA first published its Hazard Communication Standard in 1983. However, that standard did not include non-manufacturing employers in the standard's workplace requirements. Legal challenges followed in 1984. In 1985, North Carolina adopted its own Hazard Communication Standard, in the former 13 NCAC 7C.0101 (a)(99). The initial North Carolina standard was similar to the Federal OSHA standard but contained some important differences, including provisions to cover non-manufacturing workplaces, and became effective May 25, 1987.

After the legal challenges to that federal standard, federal OSHA published a new Hazard Communication Standard on August 24, 1987. The 1987 standard provided for coverage of non-manufacturing employees and became effective May 23, 1988. NCDOL then adopted the new Federal OSHA Hazard Communication Standard, 29 CFR 1910.1200, as published at 52 FR 31876 on August 24, 1987. It has also been adopted in North Carolina as part of the Construction Standards (29 CFR 1926.59), and the Agricultural Standards (29 CFR 1928.51).

Federal OSHA again published significant amendments to the Hazard Communication Standard on March 26, 2012, and the final rule became effective in North Carolina on September 1, 1996. Another amendment was issued February 8, 2013, which became effective in North Carolina on June 18, 2023. The current amendment is the most recent regarding the Hazard Communication Standards.

The specific subsections of 29 CFR 1910 to be amended are as follows:

- 29 CFR 1910.6 Incorporation by Reference
- 29 CFR 1910.1200
- Appendix A § 1910.1200—Health Hazard Criteria (Mandatory)
- Appendix B to § 1910.1200—Physical Hazard Criteria (Mandatory)
- Appendix C to § 1910.1200—Allocation of Label Elements (Mandatory)
- Appendix D to § 1910.1200—Safety Data Sheets (Mandatory)

Impact:

- State Impact: Unquantifiable benefits associated with remaining in compliance with federal standards
- Local Impact: Unquantifiable benefits associated with remaining in compliance with federal standards
- Private Impact: Net unquantifiable benefits associated with remaining in compliance with federal standards
- Substantial Economic Impact: NO

Purpose:

NCDOL is proposing to amend 13 NCAC 07F. 0101 to incorporate by reference a federal OSHA Hazard Communication amendment to the existing Hazard Communication standard found at 29 CFR Part 1910. This amendment will make the North Carolina Occupational Safety and Health Division's State Plan as effective as the federal program.

Federal OSHA Standard:

The federal Occupational Safety and Health Administration (OSHA) has amended the existing Hazard Communication Standard (HCS) to conform to the United Nations Globally Harmonized System of Classification and Labelling Chemicals (GHS). Primarily, Revision 7 addresses the issues that arose during the implementation of the 2012 update of the HCS and provides better alignment with other United States agencies and international trading partners, while enhancing the effectiveness of the standard.

The updated standard will improve the effectiveness of the existing Hazard Communication standard by better informing employees about chemical hazards in the workplace. Further, it will increase worker protections and reduce the incidences of chemical-related occupational illnesses and injuries by further improving the information required on the labels and safety data sheets for hazardous chemicals. The final federal OSHA rule also addresses issues related to the 2012 implementation of the Hazard Communication standard. The amendments will better align not only with other federal agencies, but also with Canada.

The full amendment may be found at this link: Final rule for 29 CFR 1910.1200 – Hazard Communication Standard, which OSHA published May 20, 2024: <https://www.federalregister.gov/documents/2024/05/20/2024-08568/hazard-communication-standard>. The federal standard/rule became effective July 19, 2024.

North Carolina "State Plan" status:

The North Carolina Occupational Safety and Health Act, enforced by the NC Department of Labor's Occupational Safety and Health Division, is a federally approved State Plan under the US Department of Labor's Occupational Safety and Health Administration.

The first step in the approval process for a state to gain OSHA approval is to become a Developmental Plan. During this process, a state must assure OSHA that within three years it will have in place all the structural elements necessary to be deemed effective. These elements include: appropriate legislation; regulations and procedures for standards setting, enforcement, appeal of citations and penalties; a sufficient number of qualified enforcement personnel. Once a state has completed and documented all necessary developmental steps, it is eligible for Certification. Certification renders no judgment as to actual state performance, but merely attests to the structural completeness of the State Plan.

At any time after initial approval, when it appears that the State Plan is capable of independently enforcing standards, OSHA may enter into an Operational Status Agreement with the State Plan. This commits OSHA to suspend the exercise of discretionary federal enforcement in all or certain activities covered by the State Plan.

State Plans may additionally seek Final Approval under Section 18 (e) of the Act. After at least one year following certification, the State Plan becomes eligible for final approval if OSHA determines that it is providing, in actual operation, worker protection is "at least as effective" as the protection provided by OSHA. Under Final Approval, OSHA relinquishes its authority to cover occupational safety and health matters covered by the state.²

The North Carolina State Plan was initially approved February 1, 1973. The North Carolina State Plan Certification was October 5, 1976. The Final Approval of the North Carolina State Plan was effective December 18, 1996, with an amendment on June 9, 2000, and October 19, 2000.³

Pursuant to the requirements of the federal OSHA, State plan states must adopt standards that are verbatim to or are "at least as effective as" federal OSHA standards. Federal OSHA requires that all state plans continue to adopt all standards that OSHA adopts unless the state adopts a standard that is equal to or more stringent than the adopted federal standard.

State Plan states are required to adopt a federal standard with six (6) months of the date of promulgation of the federal OSHA standard. The Assistant Secretary of Labor may permit extensions for good cause.⁴

Pursuant to federal law, OSHA may begin a takeover of a state plan if the plan is not "at least as effective as" the federal program. There are various factors that are assessed by federal OSHA through an established system of review to include quarterly and annual reviews. OSHA monitors and evaluates State Plans annually through the Federal Annual Monitoring Evaluation (FAME) process. This process is used to: determine whether the State Plan is continuing to operate at least as effectively as OSHA, track a State Plan's progress in achieving its strategic and annual performance goals, and ensure that the State Plan is meeting its mandated responsibilities under the Act and other relevant regulations. In addition, the North Carolina Occupational Safety and Health Division works closely with federal OSHA. Recently, federal OSHA has looked at taking over some state plan states to include Arizona and, currently, South Carolina.

² [State Plan Frequently Asked Questions | Occupational Safety and Health Administration \(osha.gov\)](#)

³ [North Carolina State Plan | Occupational Safety and Health Administration \(osha.gov\)](#)

⁴ [1953.5 - Special provisions for standards changes. | Occupational Safety and Health Administration \(osha.gov\)](#)

Regulatory Baseline:

For the purposes of this analysis, the regulatory baseline is the federal Hazard Communication Standard that became effective July 19, 2024 and which North Carolina is mandated to adopt verbatim within six (6) months of the federal promulgation in accordance with its State Plan status.

Analysis of Impacts to North Carolina:

As a State Plan state, North Carolina is required to incorporate the federal OSHA regulations verbatim within 6 months of federal promulgation. As such, the majority of impacts (benefits and costs) associated with the adoption and implementation of the updated Hazard Communication are attributable to the federal action. The main impacts attributable to North Carolina's proposed adoption (by reference) of the updated Hazard Communication Standard are associated with the timely adoption of the standard and maintaining compliance with its status as a State Plan state⁵.

Impacts of adopting the federal Hazard Communication Standard in a timely manner and maintaining compliance with State Plan status include:

- In the near term, if North Carolina does not adopt the proposed revisions in a timely manner, there would be a potentially extended period of time when the Hazard Communication Standard in North Carolina would conflict with the standard in effect in other states. At a minimum, this would cause confusion for those North Carolina employers who also operate in multiple states. Confusion and uncertainty over standards related to hazard communication would inherently increase the likelihood of illness and injury to workers. Failure to adopt the proposed revisions would also deprive workers in North Carolina of the additional protections that will result from implementing the updated standards. Workers would not benefit from the improved communication about chemical hazards and the lower risk of chemical-related occupational illnesses. On a more practical level, delaying (or not) adopting the proposed revisions would mean some manufacturers, importers, and distributors would lose out on potential ongoing cost savings related to the new released-for-shipment provision and less stringent labeling requirements for certain very small containers. At the same time, these entities could also avoid new, but relatively nominal,

⁵ Section 18 of the federal Occupational Safety and Health Act of 1970, 29 USC 667() encourages states to develop and operate their own state plans. Federal OSHA then approves such plans, monitors the State Plans, and provides partial funding for approved State Plan operating costs. See: [State Jurisdiction and State Plans | Occupational Safety and Health Administration \(osha.gov\)](#)

one-time costs associated with updating SDSs and labels for consistency with the reclassification; management-related costs; and costs of training employees on new requirements.

- In the longer term, if North Carolina does not adopt the proposed revisions to the Hazard Communication Standard, there would be an increased likelihood that Federal OSHA would review NC’s Occupational Safety and Health program to determine whether the state’s program is “as effective as” the federal program and the federal standards. If the review determines that the State program is not “as effective as” the federal program⁶, that determination would introduce a risk of losing State Plan status and significant federal funding that supports the State’s program. Ultimately, if North Carolina were to lose State Plan status, then the US Department of Labor’s Occupational Safety and Health Administration (federal OSHA) would implement and enforce all of its OSHA standards in North Carolina.
- Having an approved State Plan allows the state to implement its program to be more responsive to specific local needs. As compared to relying on federal implementation of OSHA, having a State Plan increases workplace safety through closer involvement with employers in the state as well as greater educational and training opportunities tailored to North Carolina employers.
- Federal OSHA does not cover public sector employees, but all 27 State Plan programs cover both state and local government employees, which is a direct benefit for the protection of public employees. <https://www.osha.gov/stateplans>
- Federal OSHA determines whether State Plans operate “at least as effectively as” the federal program by tracking every state plan’s progress in achieving its strategic and annual performance goals, and by ensuring that the state plan meets the responsibilities mandated the federal OSH Act. At a minimum, a review is held every quarter. Over the past twenty-four years, North Carolina has met the goals established for state plans.

Federal OSHA identified five main categories of impacts expected from their updates to the Hazard Communication Standard: (1) the cost of reclassifying affected chemicals and the corresponding SDSs and labels for consistency with the reclassification and to conform with new precautionary statements; (2) the cost of management familiarization and other management-related costs; (3) the cost of training employees as necessitated by the changes; (4) the cost savings resulting from the new released-for-shipment provision; and (5)

⁶ Section 18(c)(6) [State Jurisdiction and State Plans | Occupational Safety and Health Administration \(osha.gov\)](#)

Commented [JV1]: Can you say something about why having State Plan status is preferable over having the feds implement? Is it more efficient, cost effective for employers? Does it perhaps increase (at least marginally) NC worker safety?

Commented [JC2R1]: Added.

the cost savings from limiting labeling requirements for certain very small containers. The first three categories are one-time costs, and the last two categories are cost savings that would be realized by employers on an ongoing basis. The costs and cost savings will be mainly for manufacturers, importers, and distributors.

Although more appropriately attributable to the recent federal action, there are expected to be quantifiable net economic benefits (in the form of cost savings) to North Carolina employers in addition to unquantifiable benefits related to improved worker safety. Federal OSHA estimated that adoption of this rule would result in an annualized net cost savings across all states of \$29.8 million at a seven percent discount rate.⁷ Extrapolating from the total U.S. net savings, we used North Carolina's contribution to the U.S. GDP⁸ to estimate an annualized net cost savings to North Carolina of about \$0.9 million (calculated as 3% of \$29.8 million). As OSHA also describes in its analysis, modest improvements to worker health and safety are also expected, but these amounts could not be quantified. Again, these impacts are the result of the federal promulgation of the Hazard Communication Standard and are not directly attributable to the proposed adoption of the standard by North Carolina. Nevertheless, they provide important context as to the value of remaining in compliance with this federal OSHA standard. Per G.S. 150B-21.4(b1), this proposed rule change to adopt verbatim a federal Occupational Safety and Health Standard would not be considered a substantial economic impact.

End
JFC August 1, 2024

⁷ <https://www.federalregister.gov/documents/2024/05/20/2024-08568/hazard-communication-standard>

⁸ North Carolina's percentage of contribution to total U.S. GDP is about 3%. U.S. Bureau of Economic Analysis, Gross Domestic Product: All Industry Total in North Carolina [NCNGSP], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/NCNGSP>, June 27, 2024.

APPENDIX A

SUBCHAPTER 07F - STANDARDS SECTION .0100 - GENERAL INDUSTRY STANDARDS 13 NCAC 07F .0101 GENERAL INDUSTRY

The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910 promulgated as of ~~June 1, 2022~~ July 1, 2024; and exclusive of subsequent amendments, are incorporated by reference except as modified or amended in 13 NCAC 07F .0103 through .0106.

History Note: Authority G.S. 95-131; 95-133; 150B-21.6;
Eff. August 2, 1993;
Temporary Amendment Eff. August 16, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. April 1, 1996; January 1, 1996; September 6, 1995; April 1, 1995;
Temporary Amendment Eff. April 1, 1996;
Amended Eff. September 1, 1996; June 3, 1996;
Temporary Amendment Expired January 26, 1997;
Amended Eff. August 13, 2007; November 22, 2006; May 30, 2006; November 14, 2005; April 14, 2005; September 17, 2004; June 30, 2004; September 4, 2003; July 1, 2003; October 1, 2001;
November 14, 2000; September 3, 1999; February 22, 1999; October 8, 1998; July 1, 1998; April 8, 1998; October 15, 1997; March 7, 1997; February 28, 1997; February 11, 1997;
Recodified Items (1) - (4) to Rules .0103 - .0106 Eff. December 17, 2007;
Amended Eff. October 8, 2014; November 18, 2013; June 18, 2013; February 5, 2013; June 11, 2012; October 31, 2011; July 1, 2010; November 12, 2009; October 15, 2009; April 23, 2009;
April 17, 2008; February 13, 2008;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 8, 2021; September 23, 2020; April 10, 2020; February 14, 2020; October 7, 2019; June 3, 2019; December 12, 2018; November 7, 2018; July 1, 2017; May 1, 2017;
September 2, 2016; April 22, 2016;
Amended Eff. July 21, 2021 as an emergency temporary standard;
Amended Eff. March 4, 2022 (expiration of emergency temporary standard);
Amended Eff. January 1, 2025; September 1, 2022.