

*As part of the marketing plan developed by NCCA's Board of Directors, the following article by Naomi Angel is the second in a series of resources designed to help you in your sales and marketing efforts. In subsequent issues of Coil Lines, similar proofs will be featured providing you with the educational resources you need. Tool Kit – Number 1, "Preventing Job Site Storage Corrosion of Prepainted Building Panels" by Fritz Friedersdorf.*

## The Executive's Guide to Material Safety Data Sheets

*By Naomi Angel  
NCCA Legal Counsel*

When the coil coater sells a finished product or an article to a service center or OEM, the material safety data sheet (MSDS) is generally no longer required. That's because "articles" do not present a hazardous exposure to employees and are exempt from coverage under the Hazard Communication Standard (HCS). Nonetheless, purchasing managers and other OEMs typically expect to receive the MSDS and routinely ask for them. Then coil coaters and service centers do not supply them, and there's insufficient information about why which creates confusion. This Tool Kit #2, the Executive's Guide to the MSDS, is intended to help you determine whether your product is an article or a hazardous chemical, and to explain why finished products or articles are exempt from the HCS.

The Occupational Safety and Health Administration (OSHA) promulgated the HCS, also know as the "Right to Know" rule, to ensure that the potential hazards of all chemicals produced or imported into the U.S. are evaluated and that information concerning their hazards is communicated to employers and employees (29 CFR 1910.1200). The standard applies to all chemicals that are know to be present in the workplace in such a manner that employees may be exposed to them under normal conditions of use or in a foreseeable emergency.

OSHA requires there be a "downstream flow" of information. Chemical manufacturers or importers must assess the hazards of chemicals and obtain or develop an MSDS for each hazardous chemical they produce or import. They must alert the distributors with their initial shipment (and with the first shipment each time an MSDS is updated.)

Distributors must then transmit this information to their employers, who in turn must provide information to their employees about each hazardous chemical to which they are exposed. Additionally, appropriate

protective measures must be taken, such as a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. Employers are required to have an MSDS in the workplace for each hazardous chemical that they use.

By way of example, paint companies must obtain or develop an MSDS for all hazardous chemicals that are in their products. When the paint companies ship product to the coil coater, they must send all relevant MSDS to the coater. If the coater, in turn, ships that product or an unfinished product to another company, the coater must pass the MSDS downstream to the next company. But, if the coater sells a finished product, such as a coated coil "article," the paint companies' MSDS is no longer applicable or relevant. During the coater's curing process, the hazardous chemicals in the previously wet paint (listed individually on the paint companies' MSDS to the coater) evaporate or become different components that are not extractable from the surface of the coating. Consequently, no chemicals remain to be released into the workplace.

The HCS specifically provides that the MSDS requirement does not apply to an "article," currently defined in 29 CFR 1910.1200(c) as:

a manufactured item other than a fluid or particle: (i) which is formed to a specific shape or design during manufacture; (ii) which has end used function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical...and does not pose a physical hazard of health risk to employees.

In evaluating an article, one must consider whether exposure to that article presents any sort of health risk. The term “risk” as opposed to “hazard” is used, since the hazard is an inherent property of the chemical and exists no matter the quantity of exposure. To be exempted as an article, exposure must not pose a risk to employee health. A coil of coated steel or aluminum sold to an OEM would fit this definition of an article. There is no post-finishing involved.

Hazard evaluations must be made on a case-by-case basis since it's the manufacturer who is most familiar with a product's composition, its intended uses, and the potential downstream exposures. Manufacturers or importers must do their best to anticipate the uses of their best to anticipate the uses of their products and determine whether downstream employees can be exposed to a hazardous chemical. If such an exposure does occur, or has the potential to occur, then the product could not be considered as an article. If the finished product does not potentially release chemicals during normal operating conditions, it would be considered an article and be exempt from the requirement for an MSDS.

For further assistance or information, contact the Office of Health Compliance Assistance at 202.693.2190 or log onto

<http://www.ilpi.com/msds/osha> or [www.osha-slc.gov/OshDoc/Interp\\_data/11990061B.html](http://www.osha-slc.gov/OshDoc/Interp_data/11990061B.html).

*Naomi Angel serves as legal counsel to NCCA. She practices with the Chicago law firm of Howe & Hutton and can be reached at [nra@howehutton.com](mailto:nra@howehutton.com). This article is provided with the understanding that the publisher is not engaged in rendering legal or professional services through its distribution. If legal advice or other expert assistance is required, the services of a competent professional should be sought.*