



May 19, 2021

OSHA Docket Office
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Docket No. OSHA-2019-0001

Via regulations.gov submission

RE: Hazard Communication Standard Notice of Proposed Rulemaking

To whom it may concern:

The Society of Chemical Manufacturers and Affiliates (SOCMA) is pleased to submit the following comments on the U.S. Occupational Safety and Health Administration (OSHA)'s proposed revisions to its Hazard Communication Standard (HCS).¹

SOCMA is the national trade association dedicated to the specialty and fine chemical industry. Founded in 1921, SOCMA represents a diverse membership of chemical companies who batch manufacture new and innovative chemistries used in a wide range of commercial, industrial, and consumer products. SOCMA maintains a strong record of member service through programs that maximize commercial opportunities, enhance regulatory and legal compliance, and promote industry stewardship.

SOCMA members have a significant interest in OSHA's proposed rule, which aims to align the HCS with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Revision 7. SOCMA members have devoted significant resources and time towards evaluating potential chemical hazards, communicating hazard information, and otherwise protecting workers. SOCMA members also are generally supportive of harmonizing the HCS and GHS, and therefore support a number of modifications to the HCS that would align U.S. workplace hazard communication requirements with those of our international trading partners, while also improving certain practical aspects of compliance with the standard. SOCMA also provides a number of recommendations to make the HCS more manageable for regulated entities.

SOCMA offers the following comments for OSHA's consideration:

¹ 86 FR 9576 (February 16, 2021).

I. SOCMA Support Revised Labeling Provisions of Small Containers

OSHA's proposal provides that, where it is not feasible to present the full required set of label information on certain small containers, companies can provide reduced information. Labeling requirements for small containers were SOCMA members' greatest challenge in complying with the last revision of the HCS. Specialty chemical manufacturers in particular produce chemical substances in relatively low volumes for highly differentiated and functional end uses. It is impractical, if not impossible, for many of them to label typical containers of chemical products in accordance with the provisions of GHS Revision 7 without providing additional accommodations for small containers. This compliance difficulty is due to several issues, including the physical impracticality of labeling such small containers, the cost and availability of labeling equipment that can accommodate small-size printing, and additional complexities associated with having to also account for the labeling requirements of other jurisdictions on such small containers. Many other industries faced similar challenges, as OSHA well knows -- in a 2015 online poll of most-desired Labor Department reforms, it came in third.²

OSHA proposes that, for containers less than or equal to 100 ml capacity, the chemical manufacturer, importer, or distributor must include, at a minimum: product identifier; pictogram(s); signal word; chemical manufacturer's name and phone number; and a statement that the full label information for the hazardous chemical is provided on the immediate outer package. For containers less than or equal to 3 ml capacity, where the company can demonstrate that any label interferes with the normal use of the container, OSHA proposes that no label is required, but the container must bear, at a minimum, the product identifier, while the outer package must have the full label information.

SOCMA supports these provisions for small containers and believes they will meaningfully reduce compliance burdens for companies that manufacture products in very small volumes. Providing that certain minimum information appears on the inner containers, with the full label information for each substance or mixture on the outer packaging, is a reasonable and protective approach to facilitate hazard communication for low volume products.

II. SOCMA Supports Regulatory Flexibility for Chemicals Released for Distribution

Under the current HCS, manufacturers have six months to update their product labels whenever they learn of health or safety information that warrants revising a product label. This can be difficult in practice when products remain at distributors' facilities for so long that they exceed the 6-month deadline. There is also significant concern among chemical manufacturers that employees at distributor warehouses would be required to break down existing packaging to put new labels on all of the containers, and then re-package the product -- activities that can pose serious safety risks, and that such employees are not qualified to conduct. This requirement has also conflicted with a separate HCS provision that states that warehouse employees may not remove or deface labels on incoming containers of hazardous chemicals.³ This issue was another source of broad concern under the last update of the HCS, prompting an industry petition in 2016 that OSHA promised to address in this update.⁴

² See <https://dolregs.ideascale.com/a/ideas/top/campaign-filter/byids/campaigns/15893?pageOffset=0>.

³ 29 C.F.R. § 1900.1200(b)(4)(i).

⁴ <https://cpda.com/wp-content/uploads/2016/12/OSHA-Response-December-2016-to-CPDA-Petition-on-HCS-2012.pdf>

OSHA proposes to remedy this issue by providing that chemicals that have been released for shipment and are awaiting future distribution need not be relabeled to incorporate new significant information about hazards. The manufacturer would only have to provide the updated label for each individual container with each shipment once the product reaches its customer. SOCMA supports this approach and believes it will significantly reduce the compliance burdens for chemicals that have been released for distribution.

The petition also asked for the warehousing operations at a manufacturing plant to be treated as a distributor, so that warehouse employees would not have to open up sealed pallets and boxes of containers to relabel them, or repackage product in preprinted bags. SOCMA is pleased that OSHA has implemented this suggestion, too, since the proposed definition of “released for shipment” (i.e., “a chemical that has been packaged and labeled in the manner in which it will be distributed or sold”⁵) by its plain language applies to products while they are still at the manufacturing site.

III. OSHA Should Modify its Provisions for Chemical Concentration Trade Secrecy

The current HCS allows a manufacturer to claim as confidential the exact percentage of a chemical in a mixture. The manufacturer must state that it has claimed the concentration as a trade secret, but it does not have to disclose anything further to OSHA. The Agency is now proposing that, in any such case, the manufacturer would have to disclose the concentration range in which the secret concentration falls, drawn from a specified list of narrow ranges currently used by Health Canada.⁶

SOCMA believes that these concentration ranges are sufficiently narrow that they may compromise the trade secrecy of a specialty chemical manufacturer’s formulation. The protection from disclosure of such information has serious commercial importance to specialty chemical manufacturers. Given the significant amount of research and development SOCMA members conduct and the highly specialized applications and markets for which their products are used, appropriate protection of chemical concentration information is of the utmost importance. Any compromising of the trade secrecy of a chemical mixture’s composition could result in the elimination of a competitive advantage and the reduction of chemical innovation domestically. If OSHA cannot adequately protect trade secrecy in the HCS, companies lose all advantage for the investments they put forward to develop a new and innovative product.

OSHA must take a balanced approach between protection and disclosure. SOCMA proposes that OSHA make the provision of concentration ranges in mixtures optional, allowing manufacturers to choose to either harmonize their label with the concentration information required by Canada, or to opt out of providing such sensitive information when claiming trade secrecy. This optional approach would still allow adequate safety information to be available on such formulations without compromising associated trade secrecy.

IV. OSHA Should Revise its Hazard Classification Requirements

⁵ 86 Fed. Reg. 9725.

⁶ The proposed concentration ranges are from 0.1 to 1%; from 0.5 to 1.5%; from 1 to 5%; from 3 to 7%; from 5 to 10%; from 7 to 13%; from 10 to 30%; from 15 to 40%; from 30 to 60%; from 45 to 70%; from 60 to 80%; from 65 to 85%; and from 80 to 100%.

OSHA is proposing to amend the “Hazard classification” section of the rule to require that manufacturers anticipate, and be responsible for characterizing and warning about, the hazards that may be presented by whatever chemicals or products their downstream customers may make with that product. The amended language states that: “[T]he chemical manufacturer or importer shall determine the hazard classes, and where appropriate, the category of each class that apply to the chemical being classified *under normal conditions of use and foreseeable emergencies*”—including “any hazards associated with a change in the chemical’s physical form or resulting from a reaction with other chemicals under normal conditions of use.”

OSHA states this language only reiterates its longstanding position that hazard classification must cover the normal conditions of use and foreseeable emergencies, and that intermediates, by-products, and decomposition products that are produced during normal conditions of use or in foreseeable emergencies must be addressed in the hazard classification. SOCMA is concerned, however, about the breadth of the proposed language -- particularly regarding “reaction[s].” The normal condition of use of many industrial chemicals *is* to be reacted with other chemical intermediates in order to manufacture yet other chemical products, and it is difficult if not impossible for a manufacturer to anticipate what those reactions might be. Indeed, in many cases, processor customers do not even inform the manufacturer what it intends to use the chemical for — in fact, they often refuses to provide such information, in some cases because the customer is a direct competitor of the manufacturer.

OSHA notes that this provision is intended to better communicate hazards in scenarios when multiple chemicals are packaged and sold together with the intention that they be mixed together before use (such as epoxy syringes), or where the other chemical is essential to the normal use of the first one (water, in the case of ready-mix cement). In both of these examples, the manufacturer clearly knows that the chemical has a single end use, and that a specific reaction must occur for the chemical to perform that use. This is vastly different from the much more common situation, in which a chemical may have numerous conditions of use and serve in a variety of reaction chemistries.

To remedy this overly broad language and make the hazard classification requirement practicable, OSHA should limit the language to only require that manufacturers characterize the hazards of any specific uses *other than the manufacture of other chemicals*, and any reactions that are necessary for the chemical to perform its intended use. OSHA should also clarify in the final rule that, beyond that, manufacturers are not expected to speculate about foreseeable reactions of their chemical products.

V. SOCMA Supports Labeling Provisions for Bulk Shipments

To address the transport of bulk shipments of hazardous chemicals (e.g., in tanker trucks or rail cars), OSHA proposes to allow labels to be placed on the immediate container or transmitted with shipping papers, bills of lading, or by other technological or electronic means so that they are immediately available to workers in printed form on the receiving end of the shipment. The proposed revision would codify policy from a 2016 guidance document that OSHA created jointly with the U.S. Department of Transportation (DOT)’s Pipeline and Hazardous Materials Safety Administration. OSHA is also proposing new language providing that where a pictogram required by DOT appears on the label for a shipped container, the HCS pictogram for the same hazard may also be provided, but is no longer required.

SOCMA supports this provision to allow additional flexibility regarding the applicability of DOT and OSHA pictograms. DOT has updated its regulations to indicate that it does not consider the HCS pictogram to conflict or cause confusion with the DOT pictogram for the same identified hazard. This provision simply harmonizes labeling regulations between OSHA and DOT while simplifying the dual labeling requirements for regulated entities.

VI. OSHA Should Extend Compliance Dates for Chemical Substances and Mixtures:

A significant issue that arose during implementation of the current iteration of the HCS was the predicament of formulators, who could not develop their own SDS until they received a final SDS from their suppliers, even though formulators and suppliers all faced the same compliance date. OSHA granted enforcement discretion for a period after the compliance date, so that formulators could develop their own compliant SDSs. Formulators also needed enforcement discretion to allow them to clear out their no-longer-compliant inventories.

In response to the difficulties experienced with the prior HCS compliance date, OSHA proposes in this rulemaking chemical manufacturers, importers, and distributors evaluating mixtures must comply with the requirements of the HCS within two years of the effective date (versus a one-year compliance period for single chemical substances). While SOCMA appreciates that OSHA has differentiated single-chemical entities and mixtures and has allotted more compliance time for the latter, it would be beneficial for OSHA to provide additional time to ensure chemical manufacturers are adequately prepared to update their labels and appropriately manage their existing inventories. SOCMA recommends that OSHA extend the compliance date for mixtures to three years and single chemical entities to two years from the effective date.

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Thank you very much for your willingness to seek feedback from stakeholders. SOCMA has appreciated the opportunity to provide advice and recommendations on improving the OSHA's Hazard Communication Standard and would welcome further discussion with the agency on its proposal. If you have any questions about these comments, please contact me at rhelminiak@socma.org.

Respectfully,

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Society of Chemical Manufacturers & Affiliates (SOCMA)