

May 19, 2021

Ms. Maureen Ruskin, Acting Director  
Directorate of Standards and Guidance  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
Via Electronic Filing at <https://www.regulations.gov>

**RE: Hazard Communication Standard, Docket No. OSHA-2019-0001**

Dear Ms. Ruskin:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the proposed rule published by the U.S. Occupational Safety and Health Administration (OSHA) regarding Docket No. OSHA-2019-0001, Hazard Communication Standard.

#### About NACD

NACD is an international association of more than 400 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

#### NACD Interest in Hazard Communication Standard

Revisions to the Hazard Communication Standard (HCS) have a huge impact on NACD members. Chemical distributors serve a critical role in the middle of the supply chain, and most of these companies have large numbers of suppliers, products, and customers. Changing safety data sheets (SDSs) and labels for hundreds or even thousands of chemical products is a major undertaking for distributors. NACD member companies, although chemical distributors, are typically NOT distributors under the HCS. The standard has an extremely limited definition of "distributor." Any entity that *imports, processes, formulates, blends, extracts, generates, emits, or repackages* is considered to be a *manufacturer*. Most NACD members perform some of these functions.

While NACD agrees with OSHA's objective to harmonize the HCS with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS) and supports some of the agency's proposed changes, we have serious concerns about others. Some of the proposed changes are not necessary for harmonization and would create excessive burdens for chemical manufacturers and distributors without providing comparable, if any, worker protections. NACD welcomes the opportunity to provide input and is pleased to offer the following comments on the proposed rule, including responses to many of OSHA's specific questions about elements of the proposal.

### **Timeframe for Updates to the HCS**

OSHA asks whether the agency should adopt a schedule for updating the HCS, such as every four years or every two revisions of the GHS, or whether the agency should wait until there are significant changes to the GHS.

Most NACD members would prefer OSHA to only make changes to the HCS when there are significant changes to the GHS. It takes substantial resources for regulated entities to update their SDSs and labels. Chemical distributors are particularly impacted by this because of the large number of products they handle and the complexities of their supply chains. For example, one NACD member imports hundreds of chemicals manufactured by dozens of foreign companies and then distributes these manufacturers' SDSs. Communicating with the multiple manufacturers to educate them on the changes is a significant burden. For chemical distributors in general, whether the change involves replacing a single word or adding multiple new precautionary statements, the bulk of the cost comes through all the actions involved with simply making an update.

That being said, NACD requests OSHA to provide as much advance notice and transparency as possible before updates so the regulated community can plan for changes. One member recently began a long-awaited project to review and update their SDSs only to have this proposed rule publish a week after they started. It would be helpful for OSHA to keep a running list of anticipated changes based on the activities of the GHS Subcommittee of Experts. OSHA should post this list on the agency's website and make it easy for the regulated community to access and understand. The list should also identify which changes are "significant" and provide a definition of "significant." Finally, OSHA should increase its outreach to the regulated community on the status and timeframe for changes.

### **Regulatory Text**

#### **29 CFR 1910.1200(c) - Definitions**

OSHA proposes to add several new definitions. The ones below are of particular interest to NACD.

OSHA proposes to define "bulk shipment" as "any hazardous chemical transported where the mode of transportation (vehicle) comprises the immediate container (i.e., contained in tanker truck, rail car, or intermodal container)." NACD is concerned that this proposed definition conflicts with the definition of "bulk packaging" in the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations (HMR)<sup>1</sup>, which also includes intermediate bulk

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<sup>1</sup> 49 CFR 171.8 ("bulk packaging").

containers (IBCs) with a capacity of 119 gallons or greater. This inconsistency will cause unnecessary confusion.

Rather than adopting the proposed “bulk shipment” definition, NACD urges OSHA to incorporate by reference the definition of “bulk packaging” as detailed in the HMR. This approach provides several advantages. First, it provides clarity for the shipments where there is crossover between the HCS and the HMR, and therefore, permissible labels, pictograms, etc. It also offers uniformity in the training of workers who must be able to identify the types of containers and the required information to be displayed, which would enhance safety. Finally, the approach of incorporating the HMR bulk packaging definition by reference would reduce the likelihood for future revisions. Should the HMR definition change, the HCS definition would simply refer to the latest HMR text.

OSHA proposes to define “combustible dust” as “finely divided solid particles of a substance or mixture that are liable to catch fire or explode on ignition when dispersed in air or other oxidizing media.” This definition is far too broad and expands far beyond what the National Fire Protection Association considers to be combustible dust. In addition, chemical distributors report that their suppliers are not aware of combustible dust standards in other countries. These chemical distributors who import products need to be able to provide their foreign suppliers with clear parameters and test methods so they can objectively determine whether or not their material is a combustible dust. This should be a simple yes or no answer, and how to make this determination must be available and consistent.

OSHA proposes to define “released for shipment” as “a chemical that has been packaged and labeled in the manner in which it will be distributed or sold.” This proposed definition creates needless confusion, and NACD recommends that OSHA drop it. It creates uncertainty on whether the label must explicitly state “released for shipment.” If the date of manufacture corresponds to the day a product is “packaged and labeled in the manner in which it will be distributed or sold,” can the date of manufacture stand in for the released for shipment date? An additional complication is that many products are packaged and labeled but are not ready to be shipped if awaiting final quality control, third-party testing, or customer approval.

#### **29 CFR 1910.1200(f) - Labels and other forms of warning**

First, OSHA proposes several changes to paragraph (f)(5) (bulk shipments), which would be newly titled *Transportation*. A new paragraph (f)(5)(ii) states, “The label for bulk shipments of hazardous chemicals may be on the immediate container or may be transmitted with the shipping papers, bills of lading, or other technological or electronic means so that it is immediately available to workers in printed form on the receiving end of shipment.” A new paragraph (f)(5)(iii) says that where a pictogram required by 49 CFR (DOT regulations) appears on the label for a shipped container, the pictogram specified in the OSHA HCS for the same hazard is not required on the label.

NACD questions the utility of this proposed change. Under the regulations, a DOT placard is suitable for shipment. The receiving location must receive an SDS for the product prior to or upon receiving the shipment. The value of also requiring the label is questionable as the SDS, which the customer will already have, includes more safety information than the label. In addition, bulk shipments are frequently used to fill drums and IBCs, so there is usually no need for a label as well.

A bulk receiver who takes the incoming product does not need a label at the time of receipt. If the receiver is doing a “drum-off” from tank wagon to drums or IBCs, the company will most likely be generating labels of its own and will not need the incoming label for that purpose. If the product is going directly to a bulk tank, the label *could* be useful but would be inaccurate if the facility is receiving the same product from multiple suppliers. In this case, the receiver would take the information from the SDS to create its own labeling, consistent with the company’s hazard communication program.

NACD also requests clarification regarding OSHA’s meaning of “or other technological or electronic means so that it is immediately available to workers in printed form on the receiving end of shipment” in proposed paragraph (f)(5)(ii). If a chemical distributor emails a copy of the label to the customer once, that means they should be able to have it immediately available in printed form for their workers receiving the shipment. If OSHA intends for a label to be emailed with every bulk shipment, even though the label has not changed since the last shipment, this would be cumbersome and pointless.

Under the DOT regulations, hazardous materials are “marked” (which typically includes the UN#, proper shipping name, and UN specification markings) and “labeled” (display of the appropriate hazard class symbol on the package). Therefore, NACD recommends that OSHA amend proposed paragraph (f)(5)(iii) as follows:

Where a pictogram required by the Department of Transportation under Title 49 of the Code of Federal Regulations appears on ~~the label for~~ a shipped container, the pictogram specified in Appendix C.4 of this section for the same hazard is not required ~~on the label~~.

In addition, the HCS requires the pictograms to be on the same plane as the product name and hazard statements. If the DOT symbol is on the front of the bag/one side of a tote/super sack, but the HCS label marking is on the back, the worker is not seeing all the warning pictograms. To address this, OSHA could consider adopting the following language:

“If the signal word, hazard statement(s), and pictogram(s) are in the same field of view (located on the same plane as the package’s DOT hazard class symbol), the pictogram specified in the OSHA HCS for the same hazard is not required on the label.”

Next, OSHA proposes to update paragraph (f)(11), which requires chemical manufacturers, importers, distributors, or employers who become aware of new information on the chemical hazards to update labels accordingly within six months. OSHA’s proposal newly titles paragraph (f)(11) *Release for shipment* and states that chemicals that have been released for shipment and are awaiting future distribution would not need to be relabeled; however, the chemical manufacturer or importer would need to provide the updated label for each individual container with each shipment. OSHA says that the purpose of this proposal is to account for the long distribution cycles of some products and to reduce worker hazards, including chemical exposures and ergonomic issues caused by relabeling. OSHA adds “Date chemical is released for shipment” as a label element.

While at the surface this change seems helpful, it is logistically complex and unfeasible for some business segments.

NACD strongly urges OSHA to remove the term “release for shipment” from (f)(11) and to drop the proposal to add “date chemical is released for shipment” as an HCS label element. This term is confusing and could be interpreted as requiring manufacturers, importers, and

distributors to create new labels with new dates for every different product shipment date, which would be unworkable. An additional complication is that it is common for orders to be changed, delayed, or cancelled. Adding “date chemical is released for shipment” is also unnecessary as most containers include product manufacturing dates. The product may also have a certificate of analysis that includes the manufacture date. In the rare instance the date is not provided, an auditor can ask for manufacturing records to check the timeframe of the labeling against the effective date of the rule.

Another concerning question is why a chemical manufacturer, importer, or distributor would need to provide an updated label for every individual container even though OSHA’s stated intention is that the products would not need to be relabeled. It would be prohibitively expensive to send print labels with each shipment and not feasible to track manually which shipments need labels and which do not. There would need to be sophisticated new programming of enterprise resource planning or label distribution software to trigger creation and delivery of new labels on a lot-by-lot basis, assuming the product has lot control.

Sending new labels separately for every individual container also raises safety concerns. Most customers of chemical distributors do not want to be in the relabeling business, nor should they be. If these customers receive new labels for each container, they may assume they are required to attach them. The ergonomic impact of removing a load of 50 pound bags from a palletized skid would be substantial. It is unlikely a receiver of a palletized load will be able to break down the pallet, label, and reassemble the pallet without a back injury, other ergonomic injury, or chemical exposure from unnecessary handling.

In addition, if a customer opts to apply the labels, there is no guarantee they will apply the labels to the correct containers. This could subject all parties in the supply chain, including chemical distributors, to liability if products are relabeled incorrectly. The pharmaceutical industry provides an example of the need for strict label control. Pharmaceutical products have tight label reconciliation processes, so sending separate electronic or print labels is a non-starter. All pharmaceutical products would need to be relabeled in-house prior to shipment.

For these reasons, NACD requests OSHA to amend proposed section (f)(11) as follows:

(f)(11) Release for shipment. Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical within six months of becoming aware of the new information, and shall ensure that labels on containers of hazardous chemicals shipped after that time contain the new information. Chemicals that have been labeled released for shipment and are awaiting future distribution need not be relabeled; however, the chemical manufacturer or importer must provide the updated label for each individual container with each shipment. If the chemical is not currently produced or imported, the chemical manufacturer, importer, distributor, or employer shall add the information to the label before the chemical is shipped or introduced into the workplace again.

This recommended amendment, along with dropping the proposed “released for shipment” definition in 1910.1200(c) and not adding “date chemical is released for shipment” as a label element, would eliminate needless confusion, enhance safety, and facilitate OSHA’s stated intention of not requiring packages to be relabeled.

OSHA also proposes to add a new paragraph (f)(12) to address labeling requirements for small containers. The proposal would allow labels for small containers less than or equal to 100 ml

capacity to include just the product identifier, pictogram(s), signal word, chemical manufacturer's name and phone number, and a statement that the full information is provided on the immediate outer package. For containers with a capacity of 3 ml or less, the proposal would allow only the product identifier to be displayed. To use these options, the chemical manufacturer, importer, or distributor must be able to demonstrate that it is not feasible to use pull-out labels, fold-back labels, or tags containing the full information.

NACD appreciates OSHA's efforts to address labeling for small containers. This can be a challenge because of the limited space for information on small containers. One alternative is to allow for minimal information on the label and to reference the SDS. NACD encourages OSHA to recognize it is usually extremely difficult to attach pull-out labels, fold-back labels, or tags to small containers and that even if they are attached, they are likely to fall off. This is an example of why it is not feasible to use these measures.

#### **29 CFR 1910.1200(g) - Safety Data Sheets**

Under this section, OSHA proposes a change to paragraph g(10), which addresses the form and storage of SDSs, to allow SDSs to be stored, rather than designed, in a way that covers groups of hazardous chemicals in a work area. This is to clarify that the paragraph refers to storage only, recognizing that as of the 2012 HCS revisions, OSHA requires a standard *format* for SDSs.

NACD has no objection to this proposed change. It would not require any major changes to chemical distribution operations. The proposal makes sense as the HCS requires SDSs to use a standard format.

#### **29 CFR 1910.1200(i) - Trade Secrets**

OSHA proposes to allow manufacturers, importers, and employers to withhold a chemical's concentration range as a trade secret. OSHA also proposes the use of prescriptive concentration ranges in lieu of the actual concentration or concentration range whenever these items are claimed as trade secrets. The proposed ranges are the same as those required by Canada.

NACD supports OSHA's proposal to allow manufacturers, importers, and employers to withhold a chemical's concentration range as a trade secret and on the use of prescriptive concentration ranges in lieu of the actual concentration or concentration range whenever a trade secret claim is made on these items. These proposals have several benefits. First, the changes would help companies when preparing SDSs on mixtures with ingredients containing trade secret components. They would also help to eliminate the guesswork associated with selecting an appropriate range. The allowance would help companies to generate more accurate hazard assessments and report more accurately.

Individuals on the commercial/sales side of the chemical distribution business reported no concerns that the prescribed ranges would inadvertently disclose trade secret information. The ranges would also provide the benefit of having everyone use the same standard. In addition, the concentration ranges would facilitate compliance with the OSHA Process Safety Management Standard and Environmental Protection Agency Risk Management Program by helping to identify concentration thresholds. Finally, NACD appreciates that the concentration ranges are the same as those used in Canada.

## 29 CFR 1910.1200 Appendix C - Allocation of Label Elements

OSHA proposes several changes to labeling, many of which are editorial, clarifying, or organizational. OSHA also proposes significant updates to the precautionary statements in every hazard class and category. OSHA also proposes to require prioritization of certain statements related to medical response.

These are massive changes that could require many companies to relabel all their products, which would involve extensive software updates. This is also related to SDSs because the SDS data is used to develop the labels. Implementation would be equivalent to that experienced with HCS 2012. While it is possible to make all these changes, the main concern is the compliance timeline, which is severely inadequate as proposed. NACD discusses this in detail later in these comments under “Other Issues, Implementation Dates.”

OSHA is also considering adopting the GHS Revision 8 precautionary statements now. It would make sense to change these once rather than adopting Revision 8 later and updating the precautionary statements a second time. Adequate time of a few years would be needed for complete implementation of this change.

The proposal also creates concerns about the volume of information on the label and already-difficult-to-read print. NACD cautions against requiring too much information on the HCS label. To enhance worker safety, labels need to be as user friendly as possible. If there is too much data on the label, users may not be able to identify quickly the most essential information. The SDS provides the comprehensive information that will be the main resource if someone is hurt.

## 29 CFR 1910.1200 Appendix D - Safety Data Sheets

Under Section 1, OSHA proposes that the address and telephone number provided on the SDS must be domestic. This requirement would be a significant change for some foreign suppliers and importers. Currently, in some cases, SDSs from foreign suppliers are geared for the U.S. but lack any U.S. address or phone number. Some SDSs have U.S. phone numbers but not U.S. addresses.

If the supplier is unwilling to have a U.S. address and phone number, the importer will need to generate a new SDS with their own U.S. address and phone number, therefore assuming the liability for all the information. Having this language in the HCS itself rather than only in a letter of interpretation, as is currently the case, could be helpful in providing proof to foreign suppliers that this is a requirement.

Having a U.S. address and phone number on the SDS would also be consistent with current C.1.1 - “The labels on shipped containers shall also include the name, address, and telephone number of the chemical manufacturer, importer, or responsible party.”

In Canada, the Workplace Hazardous Materials Information System requires the information of the Canadian entity (importer) to be on the SDS and the container. Canadian distributors are essentially required to relabel every item they import. This is burdensome and causes exposure risks.

Also concerning is that global business is complex and presents challenges related to this issue. At many manufacturing facilities, packaging and palletizing is 100 percent automated, meaning that workers do not come in contact with the product/containers at all. If the importer's information, including address and phone number, is required on the label, U.S. importers are essentially asking the manufacturers to "private label" or "brand" their products for them. Facilities with automated packaging are not going to stop their production to provide this service, which will overwhelmingly hurt small businesses that do not have the volume or leverage to convince their suppliers to do this.

Under Section 2, OSHA proposes to include "any hazards associated with a change in the chemical's physical form under normal conditions of use" and identification of hazards that "result from a chemical reaction."

This is a significant change, and NACD is concerned that this proposal would create an impossible situation for chemical manufacturers and distributors. NACD members generally sell to widely differing markets and are too far up the supply chain to always know the ultimate uses for their products. There is no way to ascertain the thousands of ways that could be considered "normal conditions of use." Determining downstream hazards is outside the scope of the HCS responsibilities for a distributor or producer. HCS scope is for the *workplace*, and the *employer* is responsible for conducting hazard assessments so they know how chemicals will behave in their own processes or applications. It is impractical for a distributor to know all possible uses and hazards or potential reactions associated with downstream customers processes without knowing the details of those processes.

Any chemical that can be mixed with a wide range of other chemicals could have an extensive list of hazards that "result from a chemical reaction." The intent of the proposed requirement seems directed at products meant to undergo a specific reaction as part of their use (mixing cement, epoxy, etc.) and not general use chemicals. This only makes classification more confusing for companies. These are already identified in sections 5, 9, and 10 of the SDS. Anything beyond that is unrealistic.

Because of liability concerns with attempting to determine all downstream uses and chemical reactivity hazards, this change will result in several pages of legalese in an attempt to indemnify the entity on the SDS. This will not enhance worker safety. Manufacturers and distributors should be responsible for communicating the hazards of the material in the form sold only.

NACD urges OSHA to withdraw this proposed change to Section 2. It is a significant expansion of the scope of the HCS and would add needless complexity and liability to the system. In addition, the proposed requirement is not part of the GHS so is not needed to align with versions 7 or 8.

For Section 3, OSHA is seeking comments on whether the current requirement to include the chemical name and concentration or concentration ranges of all ingredients classified as "health hazards" should be expanded to include all classified chemicals (i.e., also physical hazards and hazards not otherwise classified). Such a requirement would be similar to the EU REACH regulations, which require SDS preparers to list the classification of each hazardous ingredient.

NACD has concerns about expanding the information in Section 3 to include all classified chemicals. Hazards should be determined on a mixture basis, not an individual substance basis. While the additional concentration information could be helpful in accurately classifying some mixtures, the expansion could become too burdensome and result in the generation of an infinite amount of additional paper that would not ultimately enhance worker safety. These hazards are also generally covered in Sections 5, 7, 8, and 9 of the SDS, so it is not necessary to make this change to Section 3.

Under Section 9, OSHA proposes to update the physical properties list. NACD is concerned about changing this list and does not believe it will advance worker safety. As individuals look at SDSs and labels, they are accustomed to quickly identifying the information they need. The more lists such as this are changed, the more people need to relearn and make adjustments. Changes like this that do not add value or enhance safety should be dropped.

Under Section 11, OSHA proposes to include more information on interactive effects and details on methods used to determine this information. OSHA also proposes to add “When specific chemical data or information is not available, the preparer must indicate if alternative information is used and the method used to derive the information.”

This proposal essentially asks preparers to provide information about their data sources. NACD recommends that OSHA provide more clarification on when this is required and more details on the information the agency is seeking. Preferably, NACD recommends that OSHA update its chemical registries and chemical substance guidebook online.

## **Other Issues**

### **Electronic Labeling and Electronic Coding**

OSHA invites comments on the use of electronic labeling for chemical packaging.

The concept of electronic labeling has both advantages and disadvantages. On the positive side, this could be a practical way to address the issue of small package labeling. In addition, it could be beneficial for emergency responders, especially if it applies to SDSs as well as labels. On the negative side, some companies have concerns about the use of cell phones in chemical facilities and the distractions they cause. There are also technology challenges, including the need for a standard format among operating systems for the data to be useful, the possibility of facilities’ servers being down, wireless network accessibility, and the capability of individuals to read QR codes.

If OSHA pursues electronic labeling, this would absolutely need to be optional rather than mandatory; and, with the possible exception of small packages, hard copy labels should also be required as a back-up in case of network failures.

### **Implementation Dates**

Under the proposed rule, changes are effective 60 days after the final rule publication. Entities evaluating *substances* must comply no later than *one year* after the effective date, and those evaluating *mixtures* must comply no later than *two years* after the effective date.

NACD believes these proposed compliance dates are severely inadequate. The massive changes OSHA is proposing for labels and SDSs will require many companies to create new labels and SDSs for all their products, making the implementation effort as extensive as the HCS 2012 one was. Given the enormity of this effort, particularly for chemical distributors who can have dozens of suppliers and thousands of products, the proposed compliance deadline of one year after the effective date for substances and two years for mixtures is impossible.

One example concerns the revisions proposed in Appendix C - Allocation of Label Elements. These changes impact not only labeling, but also SDS generation because the SDS data is used to develop the labels. Section 2 of the SDS must match the label elements. If OSHA adopts the GHS version 8 provisions, several years would be needed to achieve full compliance. NACD members' software vendors estimate that the programming changes to comply with this section alone could take several months. If other label organizational changes will be made, such as with the medical information, this will only increase time needed for compliance. This will pose a major problem as some companies are still struggling with HCS 2012 changes.

OSHA should also be aware that before companies can begin to update their documents, SDS authoring providers must update their software to the revised regulations, and the companies must then install and test it.

A more realistic compliance timeline would be 18 months for substances and three years for mixtures. Most importantly, NACD requests that OSHA adopt a staggered implementation timeline, based on role in the supply chain. Under this system, the *original* chemical producer would have 18 months to comply, and the *next segment of the supply chain*, typically chemical distributors, would have an additional year. Simply giving "distributors" additional time would not suffice because the definition of "distributor" under the HCS is extremely limited. Because most chemical distributors import, process, formulate, blend, or repackage, they are considered to be manufacturers under the regulation.

Chemical distributors rely on their suppliers to provide updated SDSs so they can then produce their own SDSs and labels. During the 2012 implementation, many NACD members were caught in a bind because their suppliers did not provide the SDSs until close to the deadline. Because these companies' operations placed them in the manufacturer category under the HCS, they had little or no time to create their own SDSs and labels before the compliance deadline. OSHA recognized this and issued enforcement discretion<sup>2</sup> allowing extra time for importers and manufacturers who had not received needed classification information from their upstream suppliers, provided they had made good faith efforts to obtain the information. A similar situation will certainly occur with the current revisions unless OSHA adopts a staggered approach based on position in the supply chain.

### **Economic Analysis**

OSHA estimates that a health and safety specialist would spend 0.7 hours per SDS for establishments with fewer than 100 employees; 0.5 hours per SDS for establishments with 100-499 employees; and 0.3 hours per SDS for establishments with 500 or more employees. At a loaded hourly wage of \$56.39, OSHA estimates this results in unit costs of \$40.60, \$29.00,

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<sup>2</sup> Interim Enforcement Guidance for Hazard Communication 2012 (HCS 2012) June 1, 2015 Effective Date, May 29, 2015

and \$17.40 per SDS for small, medium, and large establishments, respectively. OSHA also estimates that a health and safety specialist would spend 1.75 hours per hazard classification for establishments with fewer than 100 employees; 1.25 hours per SDS for establishments with 100-499 employees; and 0.75 hours per SDS for establishments with 500 or more employees. At a loaded hourly wage of \$56.87, OSHA estimates this results in unit costs of \$101.51, \$72.51, and \$43.50 per SDS for small, medium, and large establishments, respectively. Finally, OSHA estimates that training costs would total \$120,158 for all affected employers.

NACD questions OSHA's differentiation of costs to produce SDSs and conduct hazard classifications between small, medium, and large companies. One of the biggest challenges is simply the hours needed to perform these functions. Depending on how many new SDSs a company must create and whether or not they have a comprehensive software system, these efforts can easily become a full-time job for some during the implementation period. One NACD member estimates they have 10,000 SDSs to review to meet the new standard and 4,000 to update. Even at OSHA's .7 hours per SDS, that is 16 months of dedicated work.

Another NACD member estimates they have 4,000 SDSs to review and 2,000 labels to update. This company, along with many other NACD members, does not create the SDSs themselves, but relies on mostly foreign suppliers to provide the documents. This results in even more time spent educating the foreign suppliers and hounding them for the correct information.

Most NACD members are already feeling the strain of additional workload under the current circumstances in dealing with shipping delays and supply scarcity. Also being forced to obtain updated SDSs during this challenging time would compound the problem.

OSHA's estimates are only somewhat realistic if a company has in-house SDS authoring software and has maintained formulas and data used in classification. If updated formulas or other data need to be obtained from toll blenders, suppliers of private label products, or outside testers, these documents will take significantly longer to update.

Many companies do not have the staff resources to produce their own SDSs in house, even with software and must contract with outside authoring companies. These companies typically charge between \$400 and \$800 for the production of an SDS and label for one product. If a company has 150 SDSs to update, which is conservative for many chemical distributors, the cost would be \$60,000 to \$120,000. This does not even include the time needed on other essential tasks, including working with the vendor on changes, reviewing internally, and managing the documentation.

Another factor is supply chain communication. Coordinating private labels and communicating with customers and suppliers is a substantial resource investment.

NACD also disagrees with OSHA's estimate of \$120,158 for training costs. The actual costs will be far higher than that as OSHA requires employers to retrain workers across all areas.

### Conclusion

NACD appreciates the opportunity to comment on OSHA's proposed revisions to the HCS. These changes will have a substantial impact on chemical distributors, and NACD encourages

OSHA to consider seriously the issues and concerns raised in these comments. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

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