

December 14, 2021

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

The Honorable Douglas L. Parker  
Assistant Secretary of Labor  
Occupational Safety and Health  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Secretary Walsh and Assistant Secretary Parker,

We, the members of the Council of Chemical Association Executives, write on behalf of our memberships to express our significant concerns with a provision in the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS) notice of proposed rulemaking<sup>1</sup> to require Section 2 of the Safety Data Sheet (SDS) 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. As we explain below, this requirement would distract workers from the actual hazards in their immediate workspaces and make compliance extremely challenging, if not impossible; add needless complexity to hazard communication; and, if adopted, lead to negative impacts on an already struggling supply chain.

Our organizations represent the entire U.S. chemical value chain. This is a unique and essential industry whose products serve as the building blocks to thousands of finished products and are foundational components of American manufacturing processes. Our members' chemical products are needed for food production and safety, water purification, pharmaceutical and vaccine development, airbags, tires, electronics, and more. Furthermore, the chemical industry is a powerful economic engine that supports more than 25 percent of America's GDP and provides 529,000 jobs across the country.<sup>2</sup>

Our organizations are deeply committed to worker safety and support the HCS's goals of providing workers with knowledge and understanding of the chemical hazards in their workplaces. We also support OSHA's objective to align more seamlessly the HCS with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). While many of the provisions included in the HCS proposed rule would facilitate these goals, the proposal to require the new downstream information in Section 2 of the Safety Data Sheet would do neither.

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<sup>1</sup> Occupational Safety and Health Administration [Docket No. OSHA-2019-0001], Hazard Communication Standard, Proposed rule; request for comments; Federal Register, Vol. 86, No. 29, February 16, 2021

<sup>2</sup> 2021 Guide to the Business of Chemistry, American Chemistry Council

If adopted in the final rule, this requirement would create an impossible situation for chemical manufacturers and distributors. Our members generally sell to widely differing markets and are frequently too far up the supply chain to always know the ultimate uses for every product. 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. The HCS’s scope is 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 an upstream manufacturer or distributor, with no direct line of sight, 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 exponentially long and unknown list of hazards that “result from a chemical reaction” – these hazards cannot reasonably be documented by the remote upstream user, particularly where the entire history of HCS has been geared towards imposing that responsibility on the downstream user who actually mixes the chemical product. 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 requirement would only make classification more confusing for companies and not result in increased worker safety. Moreover, the requirement is unnecessary as these hazards are already identified in sections 5, 9, and 10 of the SDS. Anything beyond that is unrealistic and entirely speculative.

Because of liability concerns with attempting to speculate on all downstream uses and chemical reactivity hazards, this change would necessarily result in pages of additional “legalese” in an attempt to indemnify the entity on the SDS. This serves no purpose other than to create confusion and add complexity to already congested SDSs and will not enhance worker safety. Manufacturers and distributors should be responsible for protecting those in the workplace through clearly communicating only the hazards of the material in the form in which it is sold.

Finally, the requirement is not part of the GHS, so rather than facilitating alignment, the change would have the opposite effect of making the U.S. rules even more divergent from the global system. SDS software companies, whose services are critical for chemical manufacturers and distributors, provide a clear example of the complications that would result upon adoption of the proposal. All existing SDS software data sets would be rendered obsolete, as they are based on ingredient data. Automation will be challenging, if not impossible, as the requirement would remove the empirical evidence that has been gathered over the last 15 years and replace it with a product-by-product evaluation of the hazards, which is contrary to the basic principles of GHS. Many ingredient GHS classifications are based on data from the European Union, gathered since 2007 under REACH. These include consensus classifications of GHS classifications for about 100,000 chemicals. Per the GHS guidelines, the ingredient-based data can then be used to evaluate the hazards for the mixture product, without the need for additional testing. There is no source for downstream reactions for all products sold, nor are their hazards relevant to the general shipping, storage, or handling of the products being sold.

Our organizations strongly urge OSHA to withdraw this proposed change to Section 2 as it will not enhance the communication of chemical hazard data to assure worker protection. In addition,

it is a significant expansion of the scope of the HCS, would add needless complexity and liability to the system, and undermine the laudable goals of the HCS. This proposed change would also exacerbate an already struggling product supply chain with more delays and increased costs, two unintended consequences our economy can ill afford.

Thank you for your consideration of our concerns. We look forward to your response and stand ready to assist DOL and OSHA in implementing a hazard communication system that provides clear and understandable information to workers.

Sincerely,

American Chemistry Council  
American Cleaning Institute  
American Coatings Association  
The Chlorine Institute  
Color Pigments Manufacturers Association  
Council of Producers and Distributors of Agrotechnology  
The Fertilizer Institute  
Household & Commercial Products Association  
National Association of Chemical Distributors  
Plastics Industry Association  
RISE (Responsible Industry for a Sound Environment)  
Society of Chemical Manufacturers and Affiliates

cc: The Honorable Patty Murray, Chair, U.S. Senate Committee on Health, Education, Labor and Pensions  
The Honorable Richard Burr, Ranking Member, U.S. Senate Committee on Health, Education, Labor and Pensions  
The Honorable Robert C. "Bobby" Scott, Chairman, U.S. House Education and Labor Committee  
The Honorable Virginia Foxx, Ranking Member, U.S. House Education and Labor Committee