

February 17, 2021

## Regulatory Report:

### OSHA PROPOSED RULEMAKING TO AMEND THE HAZARD COMMUNICATION STANDARD

#### What Is the Issue?

On February 16, 2021, the U.S. Occupational Safety and Health Administration (OSHA) published in the *Federal Register* a [proposed rule to update the Hazard Communication Standard \(HCS\)](#). Under the HCS, employers must evaluate potential hazards of chemicals and communicate information about these hazards and appropriate protective measures to employees through hazard classification, safety data sheets (SDSs), and labels. Revisions to the HCS have a significant impact on chemical distributors as they must update their SDSs, labels, and training to conform to the changes.

#### Background of the Proposed Rule

OSHA first adopted the HCS in 1983 to provide a standardized approach for communicating workplace hazards related to chemical exposure. Prior to the current proposal, OSHA updated the HCS in 1987, 1994, and 2012. The 2012 changes were intended to officially harmonize the HCS with the United Nations' (UN) Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Revision 3. These changes were substantial and required chemical manufacturers, importers, and distributors to make major revisions to SDSs and labels.

The UN updates the GHS every two years, most recently adopting Revision 8 in 2019. OSHA's current proposed rule aligns the HCS with GHS Revision 7, with some provisions from Revision 8 also under consideration. OSHA states that major U.S. trading partners are also aligning with Revision 7. Through the proposed rule, OSHA also seeks to enhance cooperation with international trading partners, including Canada as well as other U.S. federal agencies, and to address issues that have emerged in implementing the 2012 revisions.

#### Proposed Rule Major Provisions and Potential Impacts on NACD Members

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

OSHA is proposing several changes to paragraph (f)(5), which would be newly titled *Transportation*. A new paragraph (f)(5)(ii) would allow labels for bulk shipments of hazardous chemicals to be on the immediate containers or transmitted with the shipping papers, bills of lading, or other technological means so that they would be available to workers at the receiving locations in printed form. In addition, where a pictogram required by the Department of Transportation appears on the label for a shipped container, the HCS pictogram for the same hazard may be provided, but would not be required for bulk shipment.

Impact on NACD Members - These changes would provide more flexibility and clarity for labeling of bulk shipments.

OSHA is also proposing 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. Under the proposal, 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.

Impact on NACD Members - This change would eliminate the need to relabel many products, reducing labor costs and potential for injury and exposure.

OSHA is also proposing 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.

Impact on NACD Members - These changes would provide more flexibility in handling the challenge of labeling small containers.

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

OSHA is proposing to allow manufacturers, importers, and employers to withhold a chemical's concentration range as a trade secret. Further, OSHA is proposing 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.

Impact on NACD Members - This change would provide options for those who would like to disclose certain details while protecting the exact concentrations. It would also result in better alignment with major U.S. trading partner Canada.

#### **Appendix C to 29 CFR 1910.1200 - Allocation of Label Elements (Mandatory)**

OSHA is proposing 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.

Impact on NACD Members - Manufacturers, importers, and distributors will need to update their labels to reflect the changes one year after the rule is finalized.

#### **Appendix D to 29 CFR 1910.1200 - Safety Data Sheets (Mandatory)**

OSHA is proposing several changes to some information required on SDSs, including a requirement that the address and telephone number listed in Section 1 be in the U.S. In 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.” In Section 9, OSHA requests more information on physical and chemical properties such as particle size. Finally, in Section 11, OSHA includes more information on interactive effects and details on methods used to determine this information.

Impact on NACD Members - Manufacturers, importers, and distributors will need to update their SDSs to reflect the changes one year after the rule is finalized. Chemical distributors’ upstream suppliers will bear much of the burden for updating the SDSs.

### **Frequency of HCS Updates**

OSHA is also requesting comment on whether the agency should adopt a set schedule for updating the HCS, such as every four years or every two revisions of the UN GHS, or whether the agency should wait until there are significant changes to the GHS.

Impact on NACD Members - While a set schedule would provide more predictability and better alignment with the GHS, it may result in extra work for chemical manufacturers, importers, and distributors as they would need to update SDSs and labels more frequently.

\*Under the HCS, the definition of “distributor” is extremely limited. Any entity that *imports, processes, formulates, blends, extracts, generates, emits, or repackages* is considered to be a *manufacturer* and must comply with all manufacturer obligations. OSHA’s current proposal does not change this definition.

### **Recommended Resources**

[OSHA Hazard Communication Standard Proposed Rule](#)

[OSHA’s Redline of Changes](#)

[OSHA PowerPoint Presentation of Key Changes](#)

### **Next Steps**

Comments on the HCS Proposed Rule are due by Monday, April 19. If requested by stakeholders, OSHA may also hold a public hearing on the proposal. NACD staff will gather input from its Government Policy and Advocacy Committee and the Chemical Product Safety and Facility Process Safety Subcommittees and will file comments on the proposal with OSHA.

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