



4201 Wilson Blvd., Suite 0515
Arlington, VA 22203
(703) 527-6223

Information: Alliance for Chemical Distribution (ACD) E.O. 12866 Teleconference Meeting with OMB on OSHA Update to the Hazard Communication Standard Final Rule (RIN: 1218-AC93)

About the Alliance for Chemical Distribution (ACD)

The Alliance for Chemical Distribution (ACD)(formerly the National Association of Chemical Distributors – NACD) supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. ACD's more than 400 chemical distribution industry members are primarily small, multi-generational family-owned businesses. They provide critical chemical products used in medicine and health care, food and agriculture, clean water and sanitation, energy production, electronics, communication, and more to over 750,000 end users.

As leaders of the \$27 billion chemical distribution industry, ACD member companies have the extensive expertise, commitment to safety and sustainability, and access to a deep well of resources needed to ensure chemicals are moved safely and responsibly when and where they are needed. ACD owners and operators have a personal stake in the health, safety, and security of their employees, companies, and communities. They demonstrate their commitment through strict adherence to the highest standards in quality, safety, sustainability, and performance through compliance with ACD Responsible Distribution™.

The comprehensive Code of Management Practice, a condition of Responsible Distribution, requires each member company to have an active program designed to continuously improve safety and reduce incidents. This dedication, in addition to relationships with employees, involvement in local communities, including participation in Local Emergency Planning Committees (LEPCs), and careful compliance with numerous regulations on the federal, state, and local levels, empowers ACD members to navigate the ever-changing complexities of moving essential chemicals around the nation and the globe.

Impact of Proposed Changes to the Hazard Communication Standard on Chemical Distribution

Revisions to the Hazard Communication Standard (HCS) have a huge and largely adverse impact on ACD 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. ACD 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." The vast majority of ACD members perform some of these functions.

While ACD agrees with OSHA's objective to harmonize the HCS with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS) and supported some of the changes in the proposed rule, the Alliance has 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.

Even the need to make minor changes to SDSs and labels will be a major undertaking for the chemical distribution industry. The cumulative cost impact will be substantial. Taking into account not only the actual updates to these documents by vendors or company personnel, but also company staff review time, supply chain communications, and training, ACD members estimate that the cost of updating a single SDS ranges from \$400 to nearly \$1600. ACD has provided more detail on these issues and costs in a separate document.

HCS Updates Should be Simplified and Limited to Those Needed to Harmonize with the GHS

While ACD understands the necessity of periodically updating the HCS to harmonize with the GHS, the Alliance believes these changes should be kept as simple as possible. The major changes included in the February 16, 2021, proposed rule would be unnecessarily burdensome and would cause tremendous challenges for chemical distribution.

ACD Major Concerns About the HCS Proposed Rule

Definition of "bulk shipment": OSHA proposed to define "bulk shipment" as "any hazardous chemical transported where the mode of transportation comprises the immediate container. ACD 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),¹ which also includes large intermediate bulk containers. This will cause significant commercial confusion. Rather than adopting the proposed "bulk shipment" definition, ACD recommended in our comments to the proposed rule that OSHA incorporate by reference the definition of "bulk packaging" as detailed in the DOT HMR. This approach would provide clarity for the shipments in which there is crossover between the OSHA Standard and the DOT Regulations. It would also provide uniformity in worker training. Finally, this approach would reduce the need for future revisions. Should the DOT definition change, the OSHA definition would simply refer to the latest DOT text.

Definition of "released for shipment": OSHA proposed 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 definition would lead to confusion and uncertainty, and ACD recommended in our comments that OSHA drop it.

Updates to Paragraph (f)(11) Regarding Chemicals Released for Shipment: OSHA proposed to update paragraph (f)(11) so 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 also proposed to add "Date chemical is released for shipment" as a label element. While the intended purposes of these changes were to account for the long distribution cycles of some

¹ 49 CFR 171.8 ("bulk packaging").

products and to reduce worker hazards caused by relabeling, the measures would be unfeasible, logistically complex and could have the negative effect of increasing worker hazards.

In our comments on the proposed rule, ACD strongly urged OSHA to remove the term “release for shipment” from (f)(11) and to drop “date chemical is released for shipment” as a 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. This would be unworkable and would serve no purpose. Another 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 and/or certificates of analysis with the manufacture date.

Another 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 printed labels with each shipment and not feasible to track manually which shipments need labels and which do not. Extensive new programming and software would be needed to handle this.

Sending new labels separately for every individual container also raises worker 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, which increases the chance for worker injury.

A good example highlighting the potential for worker injury is palletized loads of 50 pound bags. A typical container load of 42,000 pounds is made up of 840 bags. Each pallet is typically 2000 to 2400 pounds, comprised of between 40 and 48 50-pound bags. To relabel or to affix date-released labels, workers would need to manually remove each of these bags from the pallet, affix the new HCS and date-released labels, and place the bags back onto the pallet. This situation not only increases the risk of back injury, but also of breaking bags, which would lead to increased exposure to the product contained within. In addition, many of these loads are shrink-wrapped. Removing the bags from the pallets would require the removal and disposal of the shrink-wrap, which would create unnecessary waste.

Finally, 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 to liability if products are relabeled incorrectly.

ACD urged OSHA to adopt a few simple amendments to the proposed (f)(11) updates in our written comments² on the proposed rule, which would eliminate needless confusion, enhance safety, and facilitate OSHA’s stated intention of not requiring packages to be relabeled.

Safety Data Sheet Section 2 Hazard Information: Under Appendix D – Safety Data Sheets, Section 2, OSHA proposed 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.”

² Comments from Jennifer C. Gibson, National Association of Chemical Distributors, May 19, 2021 - <https://www.regulations.gov/comment/OSHA-2019-0001-0329> - page 5

This is a massive change that would create an impossible situation for chemical manufacturers and distributors. ACD members generally sell to widely differing markets and are 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 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 the 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 would 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, thus inviting an erosion of trust in the reliability of the SDS as a credible document.

Because of liability concerns with trying to speculate on all downstream uses and chemical reactivity hazards, this change would result in pages of additional “legalese” in an attempt to indemnify the entity on the SDS. This would serve no purpose other than to create confusion and add complexity to already congested SDSs and would 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 proposed new 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 would be challenging, if not impossible, as the requirement would remove the empirical evidence that has been gathered over the last 16 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.

In our comments on the proposed rule, ACD emphatically urged OSHA to withdraw this proposed change to Section 2 as it would not enhance the communication of chemical hazard data to assure worker protection. In addition, it would be a significant expansion of the scope of the HCS, would

add needless complexity and liability to the system, and would undermine the laudable goals of the HCS.

Longer and Staggered Implementation Time Needed

A much longer implementation period is needed than the one in the proposed rule. The HCS changes will require many companies to create new labels and SDSs for all their products, making the implementation effort as extensive as it was for the 2012 updates. 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.

For example, the revisions proposed in Appendix C – Allocation of Label Elements impact not only labeling, but also SDS generation because the SDS data is used to develop labels. ACD members' software vendors estimate that the programming changes to comply with the changes could take many months. The more extensive the changes, the longer it will take.

A more realistic implementation timeline would be 18 months for substances and three years for mixtures. Most importantly, ACD requests 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 downstream 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 so limited.

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 ACD members were caught in a bind because their suppliers did not provide the SDSs until close to the deadline, giving these companies little or no time to create their own SDSs and labels. ACD and others shared this dilemma with OSHA, and the agency ultimately issued enforcement discretion³ 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.

Closing Comments

ACD strongly urges OSHA to keep the revisions to the HCS as simple as possible and consistent with the GHS. OSHA can do so by reconsidering the provisions highlighted above. If adopted, these changes would not increase worker safety. ACD also urges OSHA to adopt a more realistic implementation schedule that recognizes the complexities of the supply chain.

³ Interim Enforcement Guidance for Hazard Communication 2012 (HCS 2012) June 1, 2015, Effective Date, May 29, 2015