

May 19, 2021

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

Subject: Proposed Rulemaking<sup>1</sup> to Modify the Hazard Communication Standard;  
Docket No. OSHA-2019-0001

Dear Ms. Ruskin,

The Household & Commercial Products Association<sup>2</sup> (HCPA) appreciates the opportunity to provide the following comments on the Occupational Health and Safety Administration's (OSHA) Notice of Proposed Rulemaking (NPRM) to modify the existing Hazard Communication Standard (HCS) to align with the United Nation's Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Revision 7 (GHS, Rev. 7). The purpose of this rulemaking is to address issues that arose during the implementation of the 2012 update to the HCS and provide better alignment with other U.S. agencies and international trading partners, without lowering overall protections of the standard.

HCPA represents members that produce chemicals and formulated finished products that are subject to the existing HCS and therefore have a significant interest in the proposed revisions to the regulation. Among these products are those that utilize aerosol technology. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, representing the interest of companies that manufacture, formulate, supply and market a wide variety of products packaged in an aerosol form.

In general, HCPA supports updating the HCS to better align with other U.S. agencies and international trading partners, in particular Canada and Mexico, to the maximum extent

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<sup>1</sup> Federal Register Vol. 86, No. 29, available at <https://www.govinfo.gov/content/pkg/FR-2021-02-16/pdf/2020-28987.pdf>

<sup>2</sup> The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

practicable. HCPA strongly supports a harmonized implementation of GHS, Rev. 7, among USMCA partners and, in particular, between Canada and the U.S. since the two countries are major trading partners and have mature hazard communication systems in place. Given that manufacturing and marketing are highly integrated in North America, implementation of GHS, Rev. 7, is an opportunity to harmonize hazard communication to facilitate trade and improve worker protection. Therefore, HCPA urges OSHA to work with the Government of Canada not just to harmonize U.S. OSHA's HCS and Canada's Hazardous Products Regulations (HPR), but to also adopt similar timelines for implementation. By doing so, companies will be able to maximize resources to efficiently transition their processes and procedures to update the classification, labeling and other documentation of their chemicals and finished products for both countries and minimize trade disruptions.

The following are HCPA's comments addressing questions presented in the NPRM, as well as comments concerning the proposed update.

**I. HCPA Requests an Extension of the Phase-In Implementation of GHS, Rev. 7 by a Year.**

OSHA is proposing to implement the revised provisions over a two-year phase-in period. OSHA proposes that chemical manufacturers, importers, and distributors evaluating substances comply with all modified provisions of the HCS no later than one year after the effective date while chemical manufacturers, importers, and distributors evaluating mixtures comply with all modified provisions no later than two years after the effective date.

HCPA supports the phase-in implementation of the revised provisions. This will allow chemical manufacturers, importers, and distributors evaluating mixtures to have sufficient time to complete their classification and labeling with up-to-date information provided by those that manufacture, import, and distribute substances.

However, HCPA requests an additional year for both the evaluation of substances and mixtures. Not all companies – whether they be manufacturers, importers, or distributors – have internal systems in place to evaluate all their substances or mixtures on their own. These companies will have to utilize external resources with the necessary expertise to make the proper evaluations, and with an update to the HCS, the people capable of doing such evaluations will be in high demand and likely have backlogs to work through. This is also true for companies needing to evaluate their substances and mixtures for Canada and their proposed revision to the HPR. Further, for those companies that do have internal processes to handle the classification of their substances and mixtures, most are utilizing software to do much of the work. It will take months for these software systems to update their codes, which then must be beta tested to ensure that the update properly classifies substances and mixtures and avoids any unintentional errors. By the time the beta testing is completed and any issues are troubleshooted, months have passed before any actual progress at reclassifying substances and mixtures has been made.

Not only will companies that manufacture, import and distribute substances need more time to produce updated safety data sheets (SDS) and labels, but will also need more time to then communicate the updated hazard communication classification and documents through the channels of distribution which will ultimately go to the companies that manufacture, import and distribute mixtures. Thus, for this phase-in to be successful, HCPA requests an additional year for the evaluation of substances and mixtures.

With HCPA's request for an extra year to evaluate substances and mixtures, HCPA would also request OSHA work with their Canadian counterparts to also extend the phase-in implementation of the HPR to the same timeline – two years for substances and three years for mixtures.

## **II. HCPA Recommends that OSHA does not Schedule Periodic Updates of HCS**

OSHA has always envisioned that HCS would require periodic rulemakings to maintain consistency with the GHS and incorporate the progression of scientific principles and best approaches for classification and communication of workplace hazards related to hazardous chemical exposure.<sup>3</sup> HCPA supports OSHA updating the HCS when there are substantial updates in which reclassification of substances and mixtures will lead to improved worker safety. HCPA urges such updates to be coordinated with major trading partners so that harmonization is achieved so that there are not inadvertent trade barriers between different standards and allow companies to be efficient during the transitions.

However, HCPA does not support scheduling periodic updates of the HCS. To justify an update, there needs to be clear benefits to worker safety. Scheduling periodic updates without an understanding of what the updates will entail does not justify the effort and resources required by both the agency and industry. Furthermore, if only OSHA schedules periodic updates and other countries do not, the United States will not be harmonized with our trading partners and industry within the United States will be at a disadvantage compared to the competition in other regions of the world.

Therefore, HCPA recommends that OSHA only updates the HCS when there is a clear benefit to worker safety as well as continue alignment with major trading partners. Aligning the update to the HCS at the same time as Canada updating their HPR is a great start and HCPA hopes that future updates can not only be aligned with Canada, but also with Mexico.

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<sup>3</sup> 77 FR 17574, available at [https://www.osha.gov/FedReg\\_osha\\_pdf/FED20120326.pdf](https://www.osha.gov/FedReg_osha_pdf/FED20120326.pdf)

### **III. HCPA Opposes the Requirement that Labels on Shipped Containers Bear the Date the Chemical is Released for Shipment**

The proposed amendment would add a requirement requiring that chemical manufacturers, importers and distributors would have to ensure that labels on shipped containers bear the date the chemical is released for shipment. OSHA states that they believe that providing the date a chemical is released for shipment on the label would allow manufacturers and distributors more easily determine their obligations when new hazard information becomes available.

Manufacturers and importers of consumer, commercial, institutional and industrial products already apply a date code to each and every product representing the date the product is manufactured. This is a requirement for consumer and commercial products under the Environmental Protection Agency's (EPA) National Volatile Organic Compound Emission Standards,<sup>4</sup> as well as many states<sup>5</sup> and the District of Columbia that have their own consumer and commercial volatile organic compound (VOC) regulations.

The date code for the date that the product is manufactured is not only important for compliance with VOC regulations, but is one of the means which a company can track their product throughout the channels of distribution. Creating a requirement for manufacturers and importers to include a date code for the release of shipment on top of the date code for the date the substance or mixture is manufactured will not only add an unnecessary burden but can create confusion in the marketplace when tracking product throughout the channels of distribution as the date of manufacture may not be the same day as the product is released for shipment. This proposed requirement also would create an ergonomic issue for product companies and their employees. Product manufacturers have invested in technology that packages individual units into outer containers and automated palletizing equipment to reduce the potential for worker injuries. This proposed requirement would force companies to utilize labor to break down those pallets and either relabel or stencil a new label onto each outer container, followed by restacking, all of which would be done with physical labor. Rather than creating a requirement for companies to include a date code on the label for when the substance or mixture is released for shipment, HCPA recommends that OSHA has a requirement for manufacturers and importers to be able to track their material or product throughout the channels of distribution but leave it to them to determine how best to accomplish this requirement.

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<sup>4</sup> 40 CFR Part 59 Subpart C

<sup>5</sup> California, Colorado, Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Virginia

#### **IV. HCPA Requests More Flexibility in Communicating New Significant Information**

Chemical manufacturers, importers, distributors, or employers who become aware of any significant information regarding the hazards of a chemical are required to revise the labels and safety data sheets for the substance or mixture within six months of becoming aware of the new information. HCPA appreciates the proposed amendment which would not require a company to re-label the substance or mixture with the new significant information if it has been released for shipment and instead ship updated labels with the substance or mixture. However, as HCPA has recommended not proceeding with the labeling a date code for the date a substance or mixture is released for shipment, HCPA recommends allowing manufacturers and importers flexibility to determine how best to communicate updates to hazard information when new significant information becomes available throughout the channels of distribution, whether that be relabeling of individual containers, sending updated labels with shipments of product, or other means that effectively communicates the update.

#### **V. HCPA Requests Greater Alignment with Canada Concerning the New Labeling Provisions for 'Small' and 'Very Small' Containers**

Many HCPA members manufacture or import products that are either in small containers (those with a volume capacity of 100 mL or less) or very small containers (those with a volume capacity of 3 mL or less). OSHA proposes to limit the labeling requirements for chemical manufacturers, importers and distributors where they can demonstrate that it is not feasible to use pull-out labels, fold-back labels or tags to provide the full label information.

As proposed, manufacturers and importers would be able to use an abbreviated label requiring only the product identifier, pictogram(s), signal word, chemical manufacturer's name and phone number and a statement that the full label information is provided on the immediate outer package for small containers. However, manufacturers must include a statement on the outer package that the small container(s) inside must be stored in the immediate outer package bearing the complete label when not in use. Further, OSHA proposes that manufacturers and importers may indicate only the product identifier on very small containers if they can demonstrate that a full label would interfere with the normal use of a container.

HCPA appreciates OSHA's proposal as it relates to the immediate container. However, HCPA would like to see greater harmonization between the United States and Canada on the matter of labeling small and very small containers, as OSHA's proposed language does not align with the requirements in the HPR. The HPR already has a small container exemption, which simply exempts the requirements for having hazard and precautionary statements on the label. While OSHA's proposed labeling requirement on the immediate container is similar, proposing to provide the full label information on the immediate outer package adds to the list of variances between the two countries. HCPA supports the Canada's approach as small and very small containers of different mixtures can be packaged together in kits that can make labeling the outside container with full labels covering each mixture not feasible. Therefore, HCPA requests

that OSHA not include the full label requirement on the outer container nor the statement requirement on the small container that it must be stored in the immediate outer package bearing the complete label when not in use. By doing so, OSHA would be aligning with Canada while employers who have employees using chemicals in small and very small containers are still able to utilize the full information found in the SDS.

#### **VI. HCPA Supports the Exploration of Electronic Labeling for Chemical Packaging**

HCPA supports the exploration of the HCS permitting a certain level of electronic labeling. Mainly, HCPA believes that the most pertinent information, such as the product identifier, pictograms and hazard statements, should remain on labels affixed to the product, but that employers should be able to utilize digital means to convey other aspects to employees. This would result in employees having access to the most important information in the event of an incident and readily have access to other information through a scan.

In the event of an electrical failure, the SDS would still be present for employees to access all information. Manufacturers and importers should still have available online labels with complete information that can be downloaded, printed, and applied to product containers when an employer does not have the capabilities for employees to access all information digitally.

#### **VII. HCPA Recommends that the Concentration Ranges on SDS be Non-Mandatory**

OSHA is proposing to mandate the use of prescriptive concentration ranges whenever an actual concentration or concentration range is being claimed as a trade secret. By doing so, OSHA would be aligning with identical ranges required by Canada's HPR.

HCPA supports the ongoing effort by the U.S. and Canada to align their hazard communication standards. Many HCPA manufacture or import product for both the U.S. and Canadian markets. As these companies are already complying with the prescribed ranges required by Canada's HPR, they support this alignment and the flexibility that this provides.

However, there are instances where these prescribed concentration ranges would weaken the confidential business information (CBI) that this provision seeks to protect. Therefore, HCPA recommends that the prescribed concentration ranges be non-mandatory so that those that already use them for their Canadian SDSs are able to use them for the U.S. SDS while other companies can choose to utilize their own ranges that may be narrower than the prescribed ranges or can utilize ranges that protect their CBI.

### **VIII. HCPA Recommends Not Requiring the SDS to List the Classification of Each Hazardous Ingredient**

With some conditions, the HCS currently requires section 3 of the SDS to include the chemical name and concentration (exact percentage) or concentration ranges of all ingredients which are classified as “health hazards” in accordance with paragraph (d) of §1910.1200. OSHA is interested in comments on whether it should be expanded to include all classified chemicals, which would be similar to the EU REACH regulations,<sup>6</sup> which require SDS preparers to list the classification of each hazardous ingredient.

HCPA does not support such an approach for section 3 of the SDS. HCPA contends that the information in section 2, 11 and 12 sufficiently address hazard information for stakeholders. Users of the chemical are not exposed to a single ingredient within a mixture, but the entire mixture all together. When testing on an overall mixture is available, only the mixture hazards are relevant, not the ingredient hazards. When testing on the overall mixture is not available, there are cases in which the individual ingredient hazard is still not relevant to the overall mixture, such as is the case when sodium hydroxide is used as a pH buffer. Thus, the hazard information presented in the SDS should be for the entire mixture and not the individual ingredients in section 3 as to not mislead the end-user.

### **IX. HCPA is Against Requiring a ‘Reasonably Foreseeable’ Reaction in the SDS**

OSHA is proposing changes to section 2 of the SDS to require that hazards identified under normal conditions of use resulting from a chemical reaction must appear on the SDS. According to the proposed rule, “known intermediates, by-products and decomposition products that are produced during normal conditions of use or in foreseeable emergencies must be addressed in the classification.” OSHA believes this language is necessary because there has been some confusion about whether chemical reactions that occur during normal conditions of use must be considered during classification.

HCPA believes that the proposed changes to paragraph (d)(1) has far exceeded a reasonable intent. HCPA understands and agrees that chemical reactions should be included in the hazard assessment in cases when multiple chemicals are sold together with the intention that they be mixed together before use. However, HCPA recommends that the mixing of two or more chemicals be considered in classification only when the label directs the user to use the chemicals in such a manner and exclude products where the label directs to only mix with water.

A prime example of why the current proposal is overreaching would be with a concentrated cleaning product. Product manufacturers of cleaning products often produce concentrated cleaning products for commercial, institutional and industrial settings to reduce the amount of

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<sup>6</sup> ECHA, 2016, Document ID 0177

packaging and amount of water that is shipped to the end-user. The end-user dilutes the product on site with water according to the label directions. The dilution of the concentrate will only reduce the hazard of the product, not increase, and a product manufacturer cannot reasonably foresee all soils that the cleaning product can be used on. It is not practical for the SDS to list every potential reaction that can occur from cleaning each type of soil, especially when there is not a hazard to the user beyond the cleaning product itself. Thus, HCPA recommends not proceeding with the current language, and only reactions being considered for classification when the label directions dictate that two or more chemicals be mixed, excluding water.

#### **X. HCPA Supports the New Provisions for the Use of Non-Animal Testing**

OSHA is proposing to revise existing language to make it clear that all available information on a substance *must* (instead of *should*) be considered in making a determination based on the total weight of evidence. OSHA is also proposing to add new provisions for use of non-animal test methods which would be used in the weight of evidence in hazard determination and classification.

HCPA supports the new provisions for use of non-animal testing when robust, widely accepted non-animal approaches exist. The expansion not only can reduce the cost of testing substances and mixtures, but non-animal tests provide more consistent data by reducing the variables present in animal testing. HCPA encourages OSHA to monitor the development of more non-animal testing for inclusion in future updates.

#### **XI. HCPA Comments Concerning Aerosol Products**

There are numerous changes within the proposed amendment that impact the classification of aerosol products. The proposed classification changes will have a significant impact on the authoring of SDSs and development of labeling for aerosol products. In general, HCPA supports the proposed amendment as it relates to aerosol products and appreciates the opportunity to provide the following comments for OSHA.

##### **A. HCPA Supports Expansion of the Current ‘Flammable Aerosols’ Hazard Class to Include Non-Flammable Aerosols**

Under GHS Rev. 3 and the current HCS, Chapter 2.3 and appendix B.3, respectively, were titled “Flammable Aerosols.” Under the GHS Rev. 3, the hazards presented by non-flammable aerosols were most likely classified as another physical hazard class and/or health hazard class. OSHA believes that classifying aerosols as gases under pressure may not accurately identify the hazards of aerosols because aerosol containers differ from pressurized gas cylinders in terms of container characteristics and failure mechanisms, as well as not posing the same hazards.



Expanding the current ‘Flammable Aerosols’ hazard class to include all aerosol products not only makes logical sense but aligns with both the GHS Rev. 7 and GHS Rev. 8. HCPA not only supports this update, but also supports adding a note under the section ‘Gases Under Pressure’ and to Table B.5.1 to clarify that aerosols should not be classified as gases under pressure.

#### **B. HCPA Supports Aerosols Being Separate from Chemicals Under Pressure**

In GHS Revision 8 (Rev. 8), there is a new hazard category within the aerosols class: Chemicals under pressure. While there are similarities between aerosol products and chemicals under pressure, there are also differences. One of the greatest differences is the size limitations. Aerosol products are limited to only one liter in size<sup>7</sup> while OSHA notes in the proposed amendments that chemicals under pressure can be up to 450 liters. As aerosols and chemicals under pressure are independent hazard classes, it would be logical for chemicals under pressure to be its own chapter. HCPA not only supports OSHA adopting chemicals under pressure as a separate chapter from aerosols, but also encourages OSHA to pursue a change within a future revision of the GHS in which chemicals under pressure its own chapter and separate from aerosols.

#### **C. HCPA Supports the Classification Criteria for Aerosols to be Listed as Text in a Table**

The GHS Rev. 8 lists classification criteria for aerosols as text in a table similar to other hazard chapters rather than referring classifiers to the decision logics. As it does not impact the criteria for classifying an aerosol product, HCPA supports adopting the text in a table as in the GHS table 2.3.1, Criteria for aerosols, in GHS Rev. 8 so that the U.S. is consistent with other countries.

#### **D. HCPA Requests Modification to Proposed Table B.3.1 to Align Better with GHS Rev. 8 Table 2.3.1**

As previously stated, HCPA supports expanding the category ‘Flammable Aerosols’ to just ‘Aerosols’ and add criteria for a Category 3. However, the classification criteria for aerosols in OSHA’s proposal are not identical to those found within the GHS.

Within Category 2, OSHA’s proposed amendment starts with “Contains > 1% flammable components, or the heat of combustion is  $\geq 20$  kJ/g; and” whereas Table 2.3.1 does not include the statement “Contains > 1% flammable components.” HCPA recommends that the “Contains > 1% flammable components” be removed from OSHA’s proposal for Category 2 to maintain alignment.

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<sup>7</sup> See 49 CFR § 173.306; 49 CFR § 178.33; 49 CFR § 178.33b; 49 CFR § 178.33a; 49 CFR § 178.33b; 49 CFR § 178.33

Further, Category 3 states “The chemical does not meet the criteria for Categories 1 and 2. The chemical contains  $\leq 1\%$  flammable components (by mass) *and* has a heat of combustion  $< 20$  kJ/g.” As written, some may interpret this to mean that to be a Category 3 Aerosol, an aerosol product cannot contain one percent or more flammable material by mass or have a heat of combustion equal to or greater than 20 kJ/g. Within Table 2.3.1, there are two different criteria which an aerosol product could meet and be classified as a Category 3:

- (1) Any aerosol that contains  $\leq 1\%$  flammable components (by mass) and that has a heat of combustion  $< 20$  kJ/g; or
- (2) Any aerosol that contains  $> 1\%$  (by mass) flammable components or which has a heat of combustion of  $\geq 20$  kJ/g but which, based on the results of the ignition distance test, the enclosed space ignition test or the aerosol foam flammability test, does not meet the criteria for Category 1 or Category 2.

The GHS is clear that either option is acceptable and that an aerosol product that contains either one percent or greater flammable components by mass or has a heat of combustion equal to or greater than 20 kJ/g could still be a Category 3 Aerosol so long as the appropriate flammability tests does not meet the criteria for Category 1 or Category 2.

Thus, HCPA recommends that Table B.3.1 appears as follows (written in the same manner as the table appears in the proposed amendment):

TABLE B.3.1 – CRITERIA FOR AEROSOLS

Category	Criteria
1 .....	Contains $\geq 85\%$ flammable components and the chemical heat of combustion is $\geq 30$ kJ/g; or (a) For spray aerosols, in the ignition distance test, ignition occurs at a distance of $\geq 75$ cm (29.5 in); or (b) For foam aerosols, in the foam flammability test (i) The flame height is $\geq 20$ cm (7.87 in) and the flame duration $\geq 2$ s; or (ii) The flame height is $\geq 4$ cm (1.57 in) and the flame duration $\geq 7$ s.
2 .....	The heat of combustion is $\geq 20$ kJ/g; or (a) For spray aerosols, in the ignition distance test, ignition occurs at a distance $\geq 15$ cm (5.9 in), or in the enclosed space ignition test, the (i) Time equivalent is $\leq 300$ s/m <sup>3</sup> ; or (ii) Deflagration density is $\leq 300$ g/m <sup>3</sup> (b) For foam aerosols, in the foam flammability test, the flame height is $\geq 4$ cm and the flame duration is $\geq 2$ s and it does not meet the criteria for Category 1.
3 .....	Contains $\leq 1\%$ flammable components (by mass) and that has a heat of combustion $< 20$ kJ/g; or Contains $> 1\%$ flammable components (by mass) or which has a heat of combustion of $\geq 20$ kJ/g but which, based on the results of the ignition

	distance test and the enclosed space ignition test, or the foam flammability test, does not meet the criteria for Category 1 or Category 2.
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## XII. Conclusion

HCPA appreciates the opportunity to provide these comments to OSHA. HCPA supports OSHA's proposal to update and align the HCS with GHS Rev. 7 in a timeline that is consistent with Canada.

As explained in detail in these comments, HCPA respectfully recommends that:

- OSHA grants an additional year in the implementation of the updated HCS for both substances and mixtures.
- OSHA does not schedule periodic updates of the HCS, but rather updates when there is a clear benefit to worker safety and aligns with major trading partners.
- OSHA does not proceed with requiring the labeling of a date code on the label of a container when it is released for shipment.
- OSHA allow greater flexibility in how a manufacturer or importer communicates any new significant information within six months of that information.
- OSHA aligns with Canada on the labeling requirements for small and very small containers.
- OSHA explores the possibility of allowing digital communication of hazard information.
- OSHA proceeds with the prescribed concentration ranges being non-mandatory.
- OSHA does not proceed with requiring ingredient level classification within section 3 of the SDS.
- OSHA limits the scope of requiring a reasonably foreseeable reaction be included in the hazard classification and communication to only when the label directs for the mixture of chemicals, excluding for when the label directions are to dilute with water.
- OSHA continue supporting the use of non-animal test methodologies.
- OSHA revise the proposed amended Table B.3.1 to better align with GHS Rev. 8.

HCPA commits to work cooperatively with OSHA and other interested stakeholders in updating the HCS. If OSHA has any questions or would like any additional information, please do not hesitate to contact me.

Respectfully submitted,



Nicholas B. Georges

Vice President, Scientific & International Affairs