

August 5, 2021

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Subject: *Health Canada's Request for Priorities on the proposed Variances between Canadian and U.S. Regulatory Proposals for Regulatory Amendments*

The Canadian Consumer Specialty Products Association¹ (CCSPA) and Household & Commercial Products Association² (HCPA) appreciate the opportunity to provide comments on the variances of the proposed *Regulations Amending the Hazardous Products Regulations (GHS, Seventh Revised Edition)*³ and proposed Order Amending Schedule 2 to the *Hazardous Products Act*⁴, which were published in the Canada Gazette, Part I, Volume 154, Number 51 on December 19, 2020, and the U.S. proposed rulemaking to modify the U.S. Hazard Communication Standard⁵, which was published in the U.S. Federal Register, Vol. 86, No. 29 on Tuesday, February 16, 2021. We also thank you for the extension to submit on August 5, 2021.

Given that manufacturing and marketing are highly integrated in North America, implementation of the United Nation's Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Revision 7 (GHS, Rev. 7) is an opportunity to harmonize hazard communication to facilitate trade and improve worker protection. CCSPA and HCPA believe that through an ongoing collaborative effort by Health Canada and the U.S. Occupational Safety & Health

¹ CCSPA is a national trade organization that represents over 35 member companies who have 87 facilities across Canada. Collectively, we are a \$20 billion industry directly employing over 12,000 people. Our member companies make, package, and distribute soaps, detergents, personal insect repellents, deodorizers, lawn care products, antimicrobial preservatives, disinfectants, windshield washer fluid and many other consumer, industrial, and institutional products, with the goal of providing solutions for everyday needs, making our lives safer, healthier, and convenient.

² 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.

³ Available at <https://gazette.gc.ca/rp-pr/p1/2020/2020-12-19/html/reg4-eng.html>

⁴ Available at <https://gazette.gc.ca/rp-pr/p1/2020/2020-12-19/html/reg5-eng.html>

⁵ Available at <https://www.govinfo.gov/content/pkg/FR-2021-02-16/pdf/2020-28987.pdf>

Administration (U.S. OSHA) to reduce the number of variances between the proposals by both countries, not only will worker protection improve as employers implement programs that can be used in both countries, but manufacturers 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. As in 2015, our goal is to have one SDS and one label for products in North America.

CCSPA and HCPA support Health Canada's intention to coordinate and synchronize the coming into force of the amended *Hazardous Products Regulations* (HPR) with the coming into force of the updates to the U.S. Hazard Communication Standard (HCS) as both regulations are updated to GHS, Rev. 7. While regulatory changes can increase burden, having to do those changes once is key as our respective economies move into recovery from the pandemic.

We have provided the following five variances with recommendations in no particular priority as they are all key to the memberships. They are as follows:

I. Labeling of 'Small' and 'Very Small' Containers

For the Workplace Hazardous Materials Information System (WHMIS) 2015 update, Health Canada and stakeholders such as CCSPA spent significant time and resources working on the labeling of 'small' and 'very small' containers so that the pertinent information was conveyed without being overly burdensome to manufacturers and marketers of products.

CCSPA and HCPA request that Health Canada share their learnings and insights from this process with U.S. OSHA so that U.S. OSHA can benefit from Health Canada's approach to 'small' and 'very small' containers and modifies their proposal to align.

II. Labels on Shipped Containers Bear the Date the Chemical is Released for Shipment

U.S. OSHA's proposed modification to the HCS includes 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 believes 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. Creating a requirement for manufactures 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 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. CCSPA and HCPA ask that Health Canada discuss this issue to find a solution with U.S. OSHA that will avoid confusion that this proposed requirement may create.

III. SDS to List the Classification of Each Hazardous Ingredient within a Mixture

With some conditions, the HPR and HCS require section 3 of the SDS to include the chemical name and concentration or concentration ranges of all ingredients which are classified as “health hazards.” As part of the proposed modification to the HCS, U.S. OSHA solicited comments on whether this section should be expanded to include all classified chemicals, similar to the EU REACH regulations,⁶ which require SDS preparers to list the classification of each hazardous ingredient.

CCSPA and HCPA would like to share with Health Canada our concern to such an approach for section 3 of the SDS. CCSPA and HCPA contend that the information in section 2, 11 and 12 sufficiently address hazard information for stakeholders. Users of a mixture are not exposed to a single substance 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.

We would request that there be no variance created by US OSHA which may cause misalignment.

IV. Listing ‘Reasonably Foreseeable’ Reaction on SDS

U.S. OSHA’s proposed modification of the HCS proposes 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.

CCSPA and HCPA believe that the proposed amendments to the HCS far exceeded a reasonable intent. CCSPA and HCPA understand and agree 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, CCSPA and HCPA recommend that the mixing of two or more chemicals be considered in the 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.

We offer this example of a concentrated cleaning product and the possible overreach as a consequence. Product manufacturers of cleaning products often produce concentrated cleaning products for commercial, institutional and industrial settings to reduce the amount of packaging and amount of water that is shipped to the end-user. The end-user dilutes the product on site with water in accordance with 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

⁶ ECHA, 2016, Document ID 0177

not a hazard to the user beyond the cleaning product itself. Thus, CCSPA and HCPA recommend that U.S. OSHA not move forward with this amendment.

We would also suggest that Health Canada discuss with U.S. OSHA the possible consequences and ensure that both countries regulations are aligned.

V. Classification of the Flammability of Aerosol Products

There are multiple modifications in U.S. proposed amendments to the HCS relating to the classification of aerosol products. Generally, CCSPA and HCPA are aligned with U.S. OSHA's proposal for aerosol products, in part because it is aligned with Health Canada's proposed amendments to the HPR. However, unlike Health Canada's proposal for the HPR in which the classification for aerosol product is identical to those found within the GHS, the U.S. OSHA's proposal for the HCS is slightly different.

Within Category 2, U.S. OSHA's proposed amendment of the HCS starts with "Contains > 1% flammable components, or the heat of combustion is ≥ 20 kJ/g; and" whereas Table 2.3.1 of the GHS or Health Canada's proposed amendment of the HPR does not include the statement "Contains > 1% flammable components." As this difference can result in aerosol products being classified differently between the two countries, CCSPA and HCPA recommend that OSHA's proposal be modified to align with Health Canada's proposal and with the GHS.

VI. Resolving Current Variances in the spirit of harmonization

CCSPA and HCPA agree that preventing new variances is an important endeavor in the spirit of harmonization and would like to take this opportunity to recommend that OSHA and Health Canada also prioritize the resolution of the existing variances. During the Regulatory Cooperation Council's work over the years, alignment on GHS was considered a priority and as such, a working group was struck. There have been significant gains from that work but also some outstanding issues we would like to tackle in the coming months.

1. True copy – a uniquely Canadian requirement: CCSPA looks forward to working with Health Canada to align with the US on the retention of 30 years for safety data sheets and removing the legislative requirement for the label retention of 6 years.
2. Physical Hazards Not Otherwise Classified (PHNOC)/Health Hazards Not Otherwise Classified (HHNOC) in Canada vs. Hazards Not Otherwise Classified (HNOC) in the U.S. – Is there an opportunity to amend these uniquely Canadian requirements?
3. Trade secret registrations – CCSPA is committed to finding workable solutions on this uniquely Canadian registration process and find more alignment with the US.
4. Labelling – for mixtures containing a Category 2 carcinogen at a concentration between 0.1 - 1.0% - Canada must include a label statement and the U.S. does not have this requirement. Is this also an opportunity for alignment?

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VII. Conclusion

CCSPA and HCPA appreciate the opportunity to work collaboratively with Health Canada and US OSHA on these important proposals which will ensure both Canada and the United States improve worker safety while both economies continue to rebound and be competitive.

Respectfully Submitted,



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