December 22, 2021

Maureen Ruskin
Director, Directorate of Standards & Guidance
Occupational Safety & Health Administration
U.S. Department of Labor 200 Constitution Avenue, NW Washington, DC 20210

Sent via email to: ruskin.maureen@dol.gov and submitted to Regulations.Gov Docket OSHA-2019-0001

Re: ACC comments on Proposed Amendments to the Hazard Communication Standard

Dear Ms. Ruskin:

On behalf of the American Chemistry Council (ACC)[1], we greatly appreciate the opportunity to provide comments on the Occupational Safety and Health Administration's (OSHA) Notice of Proposed Rulemaking (NPRM) to update the existing Hazard Communication Standard (HCS) to conform with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Version 7. Clear and efficient implementation of GHS and ensuring working protection continues to be critically important to ACC. We look forward to engaging with OSHA and other stakeholders throughout the rulemaking process.

Introduction

The present comment focuses entirely on OSHA's proposed Section (d)(1). As you are aware, OSHA has proposed to add the following language to Section (d)(1):

- *The hazard classification shall include any hazards associated with a change in the chemical's physical form or resulting from a reaction with other chemicals under normal conditions of use.*

As we have stated multiple times throughout this rulemaking process, this proposed language would have a dramatic adverse impact on chemical manufactures and importers. For many, compliance with this language would be difficult if not nearly impossible. For others, compliance would mean a significant increase in expenditures, burdens on relationships with downstream customers, and widespread confusion – cutting against GHS's goal of clear and efficient implementation. In addition, OSHA already requires SDSs to cover topics such as "Possibility of hazardous reactions" (see Section 10 to 29 C.F.R. § 1910.1200 Mandatory Appendix D); as a result, any discernable benefits to workplace

[1] ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $565 billion enterprise and a key element of the U.S. economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports.

safety derived from proposed Section (d)(1) would be duplicative. Even more, Section (d)(1) will detract from workplace safety goals by causing confusion and inconsistencies.

ACC Encourages OSHA To Withdraw Its Proposal For Section (d)(1) – Alternatively, It Submits New Language for OSHA's Consideration

ACC encourages OSHA to withdraw its proposed language for Section 1910.1200(d)(1). Instead, as an alternative, ACC hereby proposes the following revised language:

- *To the extent not already covered in Section 10 of the SDS on Stability and Reactivity, which covers (a) Reactivity; (b) Chemical stability; (c) Possibility of hazardous reactions; (d) Conditions to avoid (e.g., static discharge, shock, or vibration); (e) Incompatible materials; and (f) Hazardous decomposition products, the hazard classification shall include any known and reasonably anticipated hazards associated with a change in the chemical's physical form or resulting from a reaction where such reaction is known at the time of shipment or importation.*

This proposal reflects the position that disclosures by chemical manufactures and importers related to reactions with other chemicals must be tied to those chemicals that are known. Otherwise, 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 Problem with Proposed Section (d)(1)

As we have stated in our prior comment letter as well as in our testimony, ACC believes that OSHA has conflated two separate obligations under the Hazard Communication Standard – the scope of the HCS with respect to an employer's workplace, and the scope of the hazard classification (known as the "hazard determination" prior to HCS 2012).

The scope of the HCS with respect to an employer's workplace extends to "any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency." 1910.1200(b)(2). Foreseeability is viewed from the perspective of what the diligent downstream employer can reasonably anticipate might occur in its facility; it has no application to an upstream supplier. This makes sense - a downstream user has actual visibility into how the chemical at issue might be used.

By contrast, HCS imposes the hazard classification obligation on chemical manufacturers and importers, which applies to the "chemicals produced in their workplaces or imported by them." 1910.1200(d)(1). In the preamble to HCS 2012, OSHA explained:

> [C]hemical manufacturers and importers tend to have greater knowledge and scientific expertise with respect to the **composition of the chemicals they make or import** than do downstream employers. See 48 FR at 53322 (Nov. 25, 1983). Therefore, manufacturers and importers are usually in the best position to assess the **inherent hazards** associated with them.

77 Fed. Reg. 17601, col. 3. OSHA's present proposal to Section (d)(1) – requiring manufactures and importers to list "any hazards . . . resulting from a reaction with other chemicals" is exceedingly broad.

Chemical manufacturers and importers understand the inherent hazards of their own chemicals, but they do not and cannot predict how their chemicals will be used downstream. While these entities may be in the best position to assess the inherent hazards associated with their chemicals, they often do not know and cannot predict how chemicals will be used downstream.

By asking chemical manufacturers and importers to take their focus away from the inherit risks of their own chemicals, and to instead speculate on reactions with an unknown number of chemicals, OSHA would in fact detract from workplace safety. As recently explained in the December 12, 2021 letter to OSHA from the Council of Chemical Association Executives (**Exhibit 1**), which is attached and incorporated into our comments here, 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. This is particularly true given that hazards are already identified in sections 5, 9, and 10 of the SDS. Anything beyond these sections is entirely speculative and it is unclear what if any improvement in workplace safety or disclosure will result from the proposed revision.

OSHA may be unaware of the many practical challenges that its proposed revision would impose on upstream manufacturers. OSHA's proposed language would seem to charge manufacturers and importers with the need to disclose information for an innumerable combination of chemical combinations undertaken by their customers ***where that information may only be known to customers*****.** Indeed, ACC members report that most downstream industrial manufacturer customers (who manufacture and process raw chemical products from ACC members) take steps to ensure the confidentiality of their own proprietary manufacturing processes. These downstream manufacturers may not share this information with the public ***or their suppliers*** because it is proprietary and confidential information.

Further, manufactures and importers may be unaware of the confidential chemical formulas used by their customers, and they also may not know the various chemical combinations and products developed by their customers. Again, many downstream customers consider their formulas and products to be valuable intellectual property that they do not share. OSHA is l aware of the ability of the "chemical manufacturer, importer, or employer" to "withhold the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture, from the safety data sheet" – as this is allowed in Section 1910.1200(i)(1). And yet, with the current proposed language, OSHA would require upstream manufactures and importers to fully disclose all of these innumerable products in their SDSs (an impossible task).

Additionally, OSHA has failed to consider the significant economic burdens to implement the new obligations triggered as a result of its proposed changes. Given the obligation for ACC members to anticipate a large number of new chemical combinations of downstream users, the new disclosures will add to the large number of SDSs that our members are required to produce. These new disclosures would also likely add significant employee time, consultant time, and new software necessary to revise the SDSs to be consistent with the OSHA proposed requirements. As detailed in Attachment 1, proposed Section (d)(1) could cost manufactures and importers millions of dollars per company without

any justified improvement in workplace safety (as discussed, the resultant confusion and length of SDSs would actually detract from workplace safety).

Rather than facilitating worldwide alignment on hazard communication, OSHA's proposal would make U.S. compliance even more divergent from the global system.

Conclusion

ACC strongly urges OSHA to withdraw this proposed change to Section d(1). 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 in seeking to communicate chemical hazard data to assure worker protection. We urge OSHA to consider the alternative language provided, which captures the sentiment of the d(1) proposal, while being cognizant of the realities of the current chemicals supply chain.

Additionally, we would like to submit Attachment 1 – Summary of ACC Member Survey Responses for the Agencies consideration. We prepare a survey following antitrust guidelines to our membership regarding general information that was then blinded and aggregated on downstream uses, trade secrets, SDS software, and PHAs. A summary of the responses can be found in the Attachment. ACC and its member companies are committed to supporting and contributing to the implementation of HCS, and we appreciate your consideration of our comments.

Please do not hesitate to contact me (raleigh_davis@americanchemistry.com) should you have any comments, or require additional information.

Sincerely,

Raleigh Davis
Director, Global Affairs

Cc: Janet Carter

ATTACHMENT 1: Summary of ACC Member Survey Responses

At the recent Informal Hearing, OSHA posed a number of questions for ACC Members. In turn, ACC surveyed its membership following its antitrust guidelines, and compiled the following blinded and aggregated responses for the Agency. As the Agency reviews this information, please recall that the chemical industry (and thus ACC's membership) is not homogenous. The goal of these responses is to provide OSHA with additional understanding and clarification as to the current practices surrounding hazard communication within our industry, and are not to be seen as a direct reflection of any individual member company nor that all companies will or do operate in a consistent manner.

Part I – Communication of Potential Hazards to Downstream Users

Member companies reported using a variety of ways to communicate with downstream users: GHS SDSs/labels, product SDS's, product labels, Technical Data Sheets, literature, Regulatory Data Sheets, and Product Handling Guidelines.

For some product lines, they reported that additional information is provided to customers for safe handling of materials. The documents are shared on corporate website or customers may request information that is sent directly to customers via the Customer Information Group. Depending on product lines, business units also employed safe handling training videos and additional handling and safety literature (some through their specific trade associations). In some instances, training is provided to customers, on-site training with customers facilitated by staff. When there are significant changes to the hazard information for a product, the information may also be communicated via customer notification letters.

For some highly reactive chemicals, there are additional processes to ensure that described to the customer is prepared to handle the chemicals. This includes survey and questionnaires, historically had included site visits, sharing training materials about these products, signing agreements, and in the past had included providing onsite training in some instances. There is additional information on the SDS indicating typical reactions that could occur. The product label will also have a link to a website that may provide more information on the safe handling of the product.

Data on total manufacture and distribution of hazardous chemicals to customers in the US.

- Estimated number of hazardous chemicals manufactured and distributed to customers in the US.
    - Member answers range from ~100 to ~60,000
- Estimated number/percentage of those chemicals that would be reacted in a downstream reaction as a normal condition of use
    - Answers range from unknown to 100%, and depends on business/product line
- Estimated number or percentage of those chemicals that are manufactured solely for use in one specific downstream chemical reaction (e.g., Portland cement, epoxy adhesive)
    - Answers range from unknown to 100%

Data on manufacture and distribution of hazardous chemicals directly to user-customers in the US.

- Estimated number of hazardous chemicals manufactured and distributed directly to **user-customers** in the US.
    - Answers include: unknown, 50%, 250 products, and have businesses which only sell direct to customers, and businesses which also use a distributor model

- Estimated percentage of these hazardous chemicals for which the processes or products in which they will be used downstream can generally be described.
    - Answers included: unknown, <10%, and 100%
- Estimated percentage of those chemicals for which member companies supply all or at least the Front End of a Process Hazard Analysis for the downstream reaction.
    - Answers included: unknown, 0%, and in a very few rare instances where we have provided that service for our customers, for specific products/downstream uses.

In the survey, we asked if member's would be able to obtain the information necessary to prepare an SDS the compiled with the currently drafted d(1) language. The answers varied between unknown and definitive no. Overall, the response was that most customers would be unwilling to share such potentially proprietary information. Two representative responses follow:
Response 1:

> "The challenge with the regulation as proposed is that it is very broad and could be interpreted as requiring a manufacturer to create an SDS based on reactions that occur downstream at its customers' facilities. Most of our customers are industrial users and further process and/or react our chemicals. For our industrial manufacturer customers, their processes are often confidential and proprietary. It would be almost impossible to address any of those downstream reactions.
>
> Typically, there is not direct feedback to suppliers from customers on what reactions will occur with the product. These reactions are often the intellectual property of the customer so wouldn't be something that would be proactively shared back to the supplier. This would be a new feedback loop and challenging for both parties to share this information. In addition, resources to put this system in place would be immense as it would likely require new work processes such as survey and IT systems to collect the data and use it effectively. It is also extremely challenging for this interaction to occur for a corporation with a large number of products and customers.
>
> Furthermore, this would not be a one-time exercise. Additional processes would be required to keep the information current. Aside from the fact that our customers may not want to share their proprietary process information, many of our products have a multitude of uses, and some can be used with multiple reactants in their downstream reactions. Therefore, generating an SDS for each downstream use would be an enormous burden requiring a significant increase in resources."

Response 2:

> "Aside from the fact that our customers may not want to share their proprietary process info, many of our products have a multitude of uses, and some can be used with multiple reactants in their downstream reactions. Therefore, generating an SDS for each downstream use would be an enormous burden requiring a significant increase in resources."

When asked about distributor-customers, members also noted that distributors add an additional level of challenge, as chemical manufacturers often do not know who is purchasing through distributors. For most distributors, their customer lists are considered proprietary.

Part 2 – Process Hazard Analysis

In the survey, we posed a question focused on when member companies conduct PHA's, and what the PHAs address. The representative responses are as follows:

- PHAs would be carried out by our EHS team to evaluate how our company uses raw materials from our suppliers.
- PHAs are conducted on a maximum five (5) year cycle and prioritized on schedule (for facilities with multiple units) based on a risk relative approach. They are used to specifically identify the hazards of the process that have the potential to result in a catastrophic incident. They are used to then identify mitigation measures and recommendations to lessen the likelihood and/or the severity of the potential event.
- There is a management of change process with various criteria that define when a PHA needs to be conducted. Aware of the hazards of our products' components and conditions and materials to avoid.
- Provide GHS data and known conditions and materials to avoid to customers.
- Customer has contacted a company and requested that help with the PHA.

We also posed questions regarding under which circumstances and how often do member companies prepare the aforementioned PHAs for customers processes, or something similar. The representative responses follow:

- Never.
- Requests and the allocation of resources; to minimize the risk to the company; and requests from facilities.
- During contract manufacturing, i.e., manufacturing a customer's product at owned/controlled sites, on company assets. In other situations, a Front End of a PHA for a customer's process would not occur. For highly reactive chemicals, customers are evaluated and an audit is performed for customers that use these highly reactive chemicals.
- Provide GHS data and known conditions and materials to avoid.
- Customer has contacted a company and requested that help with the PHA.

Section 3 – Declaring Ingredient Concentration Ranges as a Trade Secret

In our testimony and comment letter, we mentioned that a number of ACC member companies had raised concerns with the prescribed trade secret ranges. In the survey, we asked members to expand upon their concerns. We received the following responses:

- Too narrow.
- Could be easier for competitors to determine trade secret concentrations.
- These ranges do not allow companies to consider GHS cut offs. Using a range of 0.5 – 1.5% potentially crossing over a percent threshold value doesn't make sense.
- Prefer the ability to apply these trade secret ranges to products that have normal variability ranges.
- Ask agencies to allow manufacturers to use these ranges without declaring them as trade secrets.

Additionally, OSHA requested real examples of where the prescribed ranges might disclose additional information. ACC members provided the following:

- Chemist/business prefer to have wider ranges for products to discourage and reduce the likelihood of competitors testing until they get something right/falls within the same specification as our product. If there are 2 – 3 components in a solution one at 95% and two at 2 and 3 %, the 1 to 5% range could just be a few competitor tests away from getting it right. It could be easy to back engineer chemicals in a product with analytical testing, so a wide range protects more.
- Concerned the assessment of mixtures and how it could disclose confidential business information and make it easier to reverse engineer products. See two specific examples below related to skin corrosion and eye irritation.
    - Eye Irritation: Product A contains 9% of a component that is a known eye irritant. The current composition range in the SDS states 5-15%. The product is not classified as an eye irritant. Changing the concentration range to be 7-13% would make it easier for the product to be reverse engineered knowing it has to be 7-<10% to be not classified as an eye irritant. Similarly, if it was classified they would know it is really 10-13%.
    - Skin corrosion: Product A contains 6% of a component that is known to be corrosive to the skin. The current composition range in the SDS states 1-10%. The product is classified as corrosive. Changing the concentration range to be 3-7% would make it easier for the product to be reverse engineered knowing it has to be 5-<7% to be not classified as corrosive. Similarly, if it was not classified they would know it is really 3-5%.

- The current regulations require companies to disclose the normal variability of the components of the products disclosed on the SDS without the ability to protect this information as trade secret. Additionally, in many cases, the ranges provided are based around what we would consider acceptable variability for a product in a given application. In these cases, this information was obtained through detailed and costly design of experimentation to determine with customers where the best performance is obtained. Having to give this information on the SDS constitutes a mandated disclosure of this intellectual property, which is not required in other geographies and puts the US at a competitive disadvantage.

- In some cases these ranges cross various classification thresholds, which would potentially lead to questions from customers regarding mixture classifications. For example, if we have 2.5%-2.8% of a substance classified as Eye 1, we would use 1%-5% as the prescribed range. However, since this substances is present at <3%, the mixture would not be classified as Eye 1. Using a range of 1%-5% on the SDS might elicit questions from a customer as to why the mixture was not classified as Eye 1 when “high” value on the SDS is 5%. In addition, we try to set disclosures globally, so being required to use these ranges would be difficult for global SDSs.

Additionally, we asked ACC members how they are able to convey emergencies without accurately conveying ranges. The responses were the following:

- Emergencies in the US involving transportation accidents due to spills or broken packaging is most usually addressed by emergency responders by using the ERG recommended response based on the properties of the product as classified by the ERG code. Ranges on an SDS would have minimal impact for our product types.
- The SDS is based on the hazards of the product. The SDS lists components that are above particular thresholds that would have an impact on this classification.
- When classifying based on component hazards, the product classification is based on the true (or worst case) concentration of each component, regardless of what you show in Section 2. So, if you have STOT SE 3 (respiratory irritation) component in your product at 21%, you are

classifying the product as such even though your Section 3 info may say 10-30%, or 15-40%. The user gets more safety info from the actual hazard classification and corresponding SDS phrases, than they get from knowing the concentration of the component causing the classification.

Section 4 – Updating SDSs

The below data is related to the burden of implementing the proposed changes.

- Members maintain from hundreds to ~32,000 SDSs for currently offered hazardous chemical products, depending on the size of the company
- Typically 100% of SDS are created with software
- From 70 - 100% to SDS are usually created by in-house staff
- From 80% - 100% of software-created SDS are subjected to review
- From the companies surveyed, none SDS are fully created manually. Overall, the software helps to automate portions of the SDS, and then there are also manual steps involved for an SDS to be generated
- From 0-2% of SDSs are created by outside service
- Estimates required to learn how to use the SDS software include: 3-9 months, 100 man/hours
- Average hours required to prepare an SDS with software approach include: 0.5 hour – 8 hours Concerning distribution of new/updated SDS, ~5% - 48% of SDSs are distributed by mail; 52% - 100% SDSs are distributed by electronic mailing.
- The percentage of SDS that rely on data from suppliers' SDSs are: 5% - 100%; Substances SDSs typically use the vendor SDS; Mixtures SDSs use roughly 5% of the vendor data ;depends on SDS quality e.g., APAC vs EU; mixing/blending raw materials SDSs rely more heavily on our supplier SDSs than in-house manufactured substances.
- The percentage of the SDS where multiple suppliers provide different hazard classifications for substantially the same chemical include: Answers ranged from ~10%-20% to substantial. Conflicts are resolved by online searches/REACH dossiers, contacting the vendors, internal classification using best available data. If the supplier cannot provide good test data to back up their classification, we defer to our own toxicologists' assessments. Resolving the conflicts takes 1-16 hours.

Below is Information and timelines about software updates:

- Software updates occur annually and typically take 12-15 weeks
- Major updates are provided twice a year
- The software vendor typically provides two major updates each year
- The OSHA proposed changes would likely require additional software updating. Could be 4-9 months for the developer. It would typically take the chemical company 5 months to implement the software. Once this is complete the chemical company can update their product SDS which would take roughly 10-12 more months. It is estimated a total of 19-26 months from OSHA final regulation to updating the SDS.

Members provided these estimates to update SDS to comply with proposed changes to HCS <u>without</u> the <u>(d)(1) revision</u> to hazard classification provisions:

- 1-2 hours per SDS
- ~10% of products will need SDS updated or 700 SDS with a total time of 2,100 to 2,800 hours.
- Perhaps 1.5 hours per SDS. For the 32,000 hazardous SDSs, that would be 48,000 hours.

Members provided the below estimates to update SDS to comply with proposed changes to HCS if the (d)(1) revision to hazard classification provisions is adopted:

- Difficult to estimate as would need to gather information from downstream users, this would be difficult and be a lengthy process.
- The (d)(1) changes represent a significant change to the structure and format of the SDS. This complexity will lengthen the time it takes for the software company and the user to update the software to accommodate multiple hazard classifications in section 2, but I cannot provide an estimate.
- The bulk of the work/time will be to try to classify products of downstream reactions that we do not manufacture. Updating the SDS will be easier. Company estimated 16 hrs./SDS to gather data and update SDS.
- In addition to the 2,100-2,800 hours to update non (d)(1) SDS changes, it is anticipated that roughly 50% of products will need to have further communication with customers to attempt to collect the uses and chemical reactions. These interactions and the subsequent SDS updates would add an additional 5-20 hours per product for collecting the data, following up with customers, evaluating the results and updating the SDS once collected. This would require new work processes and potentially IT investments to collect and use the information. This could add an additional 17,500 to 70,000 hours to collect this information and update the SDS.
- It would require much more time to update each SDS to comply with this requirement. In addition, it would require us to spend many more hours determining the applicable downstream hazards to address for each product, and may pull in at least another 5000 - 7000 products, that are currently not GHS classified but might be classified under the proposed (d)(1) revision. So, the rough approximation for just the SDS revisions would be ~96,000 hours, which is very costly, in the millions of dollars range.

ATTACHMENT 2: Letter to OSHA from Council of Chemical Association Executives

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[2] 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.[3]

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

[2] 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
[3] 2021 Guide to the Business of Chemistry, American Chemistry Council

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.

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)

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