



DEC 09 2016

Dr. Susan Ferenc  
Council of Producers & Distributors of Agrotechnology  
1730 Rhode Island Avenue NW, Suite 812  
Washington, D.C. 20036

Dear Dr. Ferenc:

This is in response to your May 24, 2016 letter and petition asking the Occupational Safety and Health Administration (OSHA) to issue a Direct Final Rule to update the Hazard Communication Standard, published in March 2012 (HCS 2012). The petition requests that OSHA amend (f)(11) of HCS 2012 (1) to require that revised labels appear on products manufactured (rather than shipped) six months after learning of significant new hazard information, and (2) to allow revised labels to accompany new shipments as is done for safety data sheets for work operations where employees handle chemicals only in sealed containers.

OSHA is denying your request for the publication of a Direct Final Rule for several reasons. First, OSHA uses the option to publish a Direct Final Rule only for non-substantial changes to a standard or where the change being made is not controversial. OSHA believes your proposal is multifaceted and could have impacts on not only manufacturers and distributors, but workers as well. OSHA views this as a significant change to the HCS and one that would require notice and comment from interested parties. Therefore, OSHA believes that this change should go through the full rulemaking process.

Second, OSHA has already begun the process of updating the HCS to align it with the sixth revision of the GHS, as well as discuss issues that have arisen during the implementation of HCS 2012. The newly released Fall 2016 Regulatory Agenda projects issuing a notice of proposed rulemaking in October 2017, and OSHA held a stakeholder meeting as an initial step in that process on November 16, 2016. Your petition identifies a number of interesting points, which are summarized and discussed below. These points and other implementation issues are among the issues that OSHA plans to consider in the rulemaking.

The petition expresses the following concerns your organization has for warehouse operations regarding relabeling containers that may be in the distribution chain for an extended period of time, in some cases for years.

- Relabeling of these containers may be the result of becoming newly aware of significant new information on the hazards posed by the chemical or mixture and the requirement to provide this information on the label.

- Relabeling sealed hazardous chemical containers may impact the safety and health of warehouse employees, since this work is done by hand, and warehouses often lack the mechanisms and qualified employees to perform the relabeling.
- Some of these product containers cannot be relabeled (for example, the container is a bag with the information printed directly on it) and the relabeling must be done by hand.
- Potential ergonomic injuries and exposures may occur when the hazardous chemical is being repackaged.

All of these points will be considered in the upcoming rulemaking.

You have brought several issues that are outside of your request for a direct final rule. These issues include:

- Concern that the “reasonable diligence” and “good faith efforts” necessary to document that a chemical manufacturer, importer or distributor has requested and pursued the receipt of labels and SDSs from upstream suppliers imposes “new information and recordkeeping burdens”.

Regarding your concerns about documenting “reasonable diligence” and “good faith efforts”, OSHA does not regard the examples we have provided as imposing new information and recordkeeping burdens. As you know, the standard requires employers to update labels and/or SDSs within specific timeframes after becoming aware of new hazard information. In cases where employers fail to meet those timeframes, the Agency has had a longstanding policy of accepting employers’ assertions that their failure to comply was due to circumstances beyond their control; i.e., providing the employers show they have taken reasonable steps to comply.

As we do not wish to issue citations for situations beyond employers’ control, the examples of documentation that we provided in the Directive were intended to guide our compliance officers and establish uniformity in the approach used in evaluating situations of noncompliance with the timeframes for updating labels and SDSs. These examples represent the types of documentation that could demonstrate that reasonable efforts were made by employers but they do not preclude employers from using different methods to explain their failure to meet their obligations under the standard.

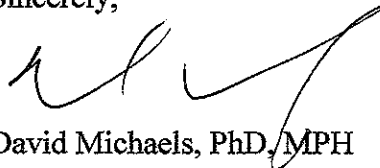
- Question of the definition of a “distributor” and how this relates to the sealed container exemption. HCS 2012 did not change the definition of “distributor”, the requirements of (f)(11), or the scope of (b)(4)(i). As you note, the 2015 Directive includes the fact that distributors may ship to manufacturers, but that is not a change to the scope of the term. The HCS’s definition of distributor includes businesses (other than a chemical manufacturer or importer) that supply hazardous chemicals to employers. Employers, as defined by the HCS, include those businesses that “produce” chemicals, and “produce”

includes "manufacture." 29 CFR 1910.1200(c). OSHA added "manufacturer" to the directive's definition merely for clarity's sake.

OSHA will include this response and CPDA's petition in the docket to be considered during the HCS Update rulemaking. I encourage you to participate in that rulemaking and to provide the Agency with any additional information you believe is relevant.

Should you have any further questions about implementation of the HCS 2012, please contact our Directorate of Enforcement Programs at 202-693-2100. Should you have any questions about the HCS Update rulemaking please contact please contact Directorate of Standards and Guidance at 202-693-1950 . Thank you for your continued interest in occupational safety and health.

Sincerely,

A handwritten signature in black ink, appearing to read "DM", is written over the printed name below.

David Michaels, PhD, MPH