



COUNCIL OF PRODUCERS &
DISTRIBUTORS OF AGROTECHNOLOGY

October 4, 2017

VIA E-Mail

Mr. Thomas Galassi
Acting Deputy Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Galassi:

On behalf of the Council of Producers & Distributors of Agrotechnology (CPDA), I am writing to you to respectfully request an extension of the upcoming December 1, 2017 deadline, outlined on page 43 of OSHA Directive Number CPL 02-02-079 (“Directive”), issued on July 9, 2015, under the Hazard Communication Standard 2012. The Directive mandates the relabeling of non-pesticide agricultural products, under the control of a distributor, that are packaged in sealed containers and stored in warehouses, if the product is to be shipped after December 1. We would ask that a 2-year extension of the deadline for relabeling these products be granted in the form of an amendment to the Directive. Furthermore, the relief we seek would be limited specifically to agricultural chemical products of extremely long shelf life including tank-mix adjuvants, plant nutritional products (including biostimulants and biorationals), soil amendments and fertilizers in end-use containers (bags and jugs).

By way of background, CPDA is the primary advocate for producers and suppliers of adjuvants, inert ingredients, post patent pesticides, and other agrotechnology products such as biorationals and micronutrients, on U.S. federal legislative and regulatory issues impacting their operations.

OSHA’s Directive provided temporary relief to distributors of non-pesticide agricultural products allowing them to ship containers that bear HCS 1994-compliant labels that are already “packaged for shipment” – meaning those existing stocks that are boxed, palletized, or shrink-wrapped – until December 1, 2017 before the need to relabel. While CPDA appreciated OSHA’s willingness to provide this temporary relief, it was nonetheless limited in scope and duration and did not fully take into consideration the unique way in which these products are sold and resold in the agricultural chemical marketplace.

Typically, these products are produced on a seasonal basis, or once every two to three years, and commonly cycle through sale, return, and resale events over several growing seasons that could span a period of five years or longer. Moreover, it is common practice for unused and unopened shipping containers and pallets to be returned to the distributor by the dealer or retail outlet after the growing season has ended. These returned units are once again distributed – intact – to the dealer the following year and may be returned – unused and unopened – at the end of yet the next growing season. As such, it is impossible to predict with absolute certainty when these products, labeled in compliance

with the 1994 Hazard Communication Standard, will ultimately dissipate from commerce. CPDA's request for a 2-year extension is less time than it will take for these products to be through distribution and circulation channels.

On May 24, 2016, CPDA submitted a joint industry petition to OSHA requesting that the Agency issue a Direct Final Rule to amend the current HCS 2012 to clarify that sealed containers in warehouses not have to be relabeled based on new hazard information if an updated label is transmitted electronically to downstream entities, as is allowed for updated safety data sheets. While OSHA denied the request set forth in the petition maintaining that such a revision to the regulatory text would be a "multifaceted" change to HCS 2012 necessitating a formal rulemaking, the Agency did acknowledge CPDA's concerns regarding the significant chemical exposure and ergonomic risks that workers would be subjected to if required to manually relabel products previously packaged for shipment and stored in warehouses. CPDA also submitted a letter on April 21, 2017 providing industry estimates of the economic burden on these companies of relabeling already containerized agricultural chemical products. CPDA is hoping that the request articulated in the May 2016 petition, supported by industry burden estimates, might be revisited as OSHA initiates an update of HCS 2012 to conform with the sixth version of the Globally Harmonized System of Chemical Labelling (GHS).

In conclusion, CPDA urgently requests that OSHA grant a temporary and narrowly crafted carve-out from the December 1st deadline for compliance with the Directive that currently applies to distributors of non-pesticide agricultural products such as tank-mix adjuvants, plant nutritional products (including biostimulants and biorationals), and fertilizers in end-use containers (bags and jugs) pending a final resolution of this issue as part of the anticipated effort to update the regulation.

CPDA appreciates OSHA's willingness to address the concerns of its member companies as they pertain to the relabeling requirements of HCS 2012. Thank you.

Sincerely,



Susan A. Ferenc, DVM, Ph.D.
President

Cc: Mr. William G. Perry, Director, Directorate of Standards & Guidance
Ms. Maureen Ruskin, Deputy Director, Directorate of Standards & Guidance