



December 29, 2009

OSHA Docket Office
Room N-2625
Occupational Safety and Health Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: OSHA Docket No. OSHA-HO22K-2006-0062

Submission via electronic means

Docket Officer:

The American Industrial Hygiene Association (AIHA) expresses its appreciation to the Occupational Safety and Health Administration (OSHA) for the opportunity to comment on the proposed rule to modify the existing Hazard Communication Standard to conform to the United Nations' Globally Harmonized System of Classification and labeling of Chemicals (GHS). The proposed rule was published in the Federal Register on September 30, 2009 (Volume 74, Number 188) beginning on page 50279.

As the premier association of occupational and environmental health and safety professionals, AIHA members serve on the front line of worker health and safety. AIHA members, as well as employees and employers, rely on federal and state rules and regulations to improve the health and safety of the workplace and protect employees from hazards, including hazards associated with chemical manufacturing, labeling and handling. We applaud the agency for taking this step in proposing this rule.

AIHA members also participate in many technical committees which support the goals of the association. One of these committees is the AIHA Stewardship and Sustainability Committee which provides a bridge between AIHA members and businesses, workers, government, and the community to meet the health, safety, and environmental needs of present generations without compromising the needs of future generations. Through education, and the development of training, communication and resource tools, the committee enables the AIHA membership to utilize sustainability and stewardship models to balance the financial, social, and environmental objectives of the organization.

One of the goals of the AIHA Stewardship and Sustainability Committee is to increase the awareness and understanding of the Globally Harmonized System (GHS) among AIHA members, including providing comments on related regulations being proposed that affect product health and safety. In addition to the comments developed by the AIHA Stewardship and Sustainability Committee, comments were received from numerous individual members of the AIHA. Since AIHA is a professional organization, comments will be limited to providing input on portions relevant in representing the professional membership of AIHA.

AIHA appreciates the opportunity to work with OSHA to help achieve the mutual goal of protecting American workers and we look forward to further opportunities to work with the agency on this and similar issues and regulatory priorities.

If AIHA can be of any further assistance, please contact me. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Cathy L. Cole". The signature is written in a cursive, flowing style.

Cathy L. Cole, CIH CSP
AIHA President

American Industrial Hygiene Association

Comments

On Proposed Revision of the

OSHA Hazard Communication Standard (HCS)

Need and Support for the Standard

1. OSHA has made a preliminary determination that the proposed modifications to the HCS would increase the quality and consistency of information provided to employers and employees. Specifically, OSHA believes that standardized label elements would be more effective in communicating hazard information; standardized headings and a consistent order of information would improve the utility of SDSs; and training would support and enhance the effectiveness of the new label and SDS requirements. Is this assessment correct? OSHA requests information that reflects on the effectiveness of the proposed modifications to the HCS in protecting employees from chemical hazards in the workplace.

AIHA agrees the proposed modifications to the HCS will improve the quality and consistency of hazard communication information provided to employers and employees. Standardized label elements will make hazard identification easier and the use of pictograms will be helpful in workplaces where literacy and English language reading is limited. The detailed criteria underlying the hazard classification system should result in far more consistent classification between chemical manufacturers resulting in similar hazards and precautions appearing on labels and SDS for similar chemicals. A standardized format for SDS will also assist employers, employees and emergency responders in identifying needed information more efficiently. AIHA supports the proposed revision of the HCS and believes it will result in better hazard recognition and safer use of chemicals in the workplace.

Economic Impacts and Economic Feasibility / Effects on Small Entities / Environmental Impacts

AIHA does not feel in a position to provide comments on areas involving economic impact, small business or environmental impact.

Hazard Classification

6. OSHA is proposing to adopt all of the physical and health hazard classes in the GHS. Among the physical and health hazard classes, OSHA is proposing to include all hazard categories in the GHS except Acute Toxicity Category 5 for oral, dermal, or inhalation exposures; Skin Corrosion/Irritation Category 3; and Aspiration Hazard Category 2. If you believe that the exclusion of these hazard categories is not consistent with the scope and/or level of protection provided by the current HCS, please describe any recommended changes to this proposal and the reasons you think these changes are necessary.

AIHA supports OSHA's decision to adopt all of the physical and health hazard classes in the GHS but to exclude those hazard categories Acute Toxicity Category 5 for oral, dermal, or inhalation exposures; Skin Corrosion/Irritation Category 3; and Aspiration Hazard Category 2. AIHA agrees that these categories would extend the coverage of the HCS beyond the current scope and they are generally not applicable to workplace safety and health. Excluding these categories is also consistent with the adoption of the GHS in the EU and therefore promotes harmonization with major trading partners.

7. OSHA has proposed a definition for unclassified hazards be added to the HCS to ensure that all hazards currently covered by the HCS--or new hazards that are identified in the future--are included in the scope of the revised standard until such time as specific criteria for the effect are added to the GHS and subsequently adopted by OSHA. Will this approach provide sufficient interim coverage for hazards such as combustible dust? Are there other hazards for which criteria should be developed and added to the GHS? Please provide information regarding these hazards, and the information available to characterize them.

AIHA supports the definition of unclassified hazards to be included in the HCS to cover specific hazards until such time that criteria for these hazards can be developed at the international level, added to the GHS and then added to the HCS. AIHA encourages OSHA to provide guidance and specific examples of unclassified hazards to assure that both chemical manufacturers and employers/employees understand what an unclassified hazard is and what is not included. A clear understanding of the hazards covered by this definition and what must be communicated is critical to assure that the goal of greater quality and consistency of hazard communication is achieved. Clarity is also needed to assure that this does not create an issue for litigation. AIHA agrees that it is appropriate for the GHS to include combustible dust and other as yet unidentified hazards as classification endpoints. It is necessary to develop the criteria and hazard communication elements at the international level to promote harmonization. Providing for interim coverage of these hazards is appropriate and necessary. In the case of combustible dust, both OSHA and the Chemical Safety Board have developed recommendations regarding combustible dust hazard communication that can be used by chemical manufacturers in a consistent manner until the GHS criteria has been adopted. Chemical manufacturers and importers should be encouraged to follow the OSHA guidance to assure consistency in communicating this hazard in the interim.

8. OSHA believes it may be more appropriate to add specific coverage for simple asphyxiants to the standard in the final rule to ensure everyone properly addresses their coverage rather than addressing them under the unclassified hazard definition. This effect is simple and straightforward, and could be addressed in a definition that does not involve extensive criteria. OSHA is requesting comment on this approach. A possible definition would be as follows:

"Simple asphyxiants" are substances that displace oxygen in the ambient atmosphere, and can thus cause oxygen deprivation in exposed workers that leads to unconsciousness and death. They are of particular concern in confined spaces. Examples of asphyxiants include: nitrogen, helium, argon, propane, neon, carbon dioxide, and methane.

OSHA would also like to solicit comments on specific label elements for simple asphyxiants. No symbol would be required, but the signal word "warning" would be used, with the hazard statement "may be harmful if inhaled". In addition, a precautionary statement such as the following would be required: May displace oxygen in breathing air and lead to suffocation and death, particularly in confined spaces. All other requirements of the standard that apply to

hazardous chemicals would also apply to chemicals that meet this definition. These substances would generally be covered already under the proposed rule as compressed gases, and may also pose other effects such as flammability that would have to be addressed as well. They are also already covered under the existing HCS. Is the definition suggested by OSHA sufficient to cover this effect? Do you have suggestions for modifying this definition? Are the label elements suggested appropriate?

AIHA supports the coverage of a definition of simple asphyxiants, but that any specific comments for this should be left to the trade associations and end users. The example definition provided in the Federal Register (p. 50282) serves as a solid starting point.

9. In order to help to ensure that health hazard determinations are properly conducted under a performance-oriented approach, the HCS includes a "floor" of chemicals that are to be considered hazardous based on several cited reference lists. In addition, the existence of one toxicological study indicating a possible adverse effect is considered sufficient for a finding of hazard for any health effect. Under the GHS, there is no floor of chemicals cited, nor is there an across-the-board provision such as the one-study criterion. Instead, specific, detailed criteria are provided for each type of health hazard to guide the evaluation of relevant data and subsequent classification of the chemical. The proposed modifications to the HCS would align the standard to the GHS approach, and thus do not include the floor of chemicals nor the universal one-study rule. Would the proposed detailed criteria provide sufficient guidance for a thorough hazard evaluation?

AIHA supports the adoption of the detailed GHS criteria and weight of evidence approach to hazard evaluation and classification. To assure consistency in hazard classification across sectors and chemical manufacturers, it is important to assure that the revised Hazard Communication Standard is as consistent with the GHS as possible. Any list of chemicals with designated classification quickly becomes dated as new information emerges and new chemicals are introduced into commerce. This results in chemicals with identical properties being classified in different ways increasing confusion and lowering worker protection. The proposed criteria are certainly robust enough to allow different, well-trained hazard classifiers to come to the same classification conclusion when evaluating the same data set. The current hazard definitions lack the detailed criteria to assure that consistency. AIHA does not believe that a weight of evidence approach to classification as opposed to a single study rule will significantly affect hazard classification. Since the weight of evidence approach requires the MSDS and label author to consider all scientifically sound data and the single study rule in the current regulation made a similar reference to the scientific validity of the study being reviewed, the classification or non-classification result should be the same. The main difference will be in the assigned severity. Communication of the uncertainty of a health effect has always been permitted.

10. OSHA has edited the chapters in the GHS for classification of physical and health hazards to remove material not directly related to classification and to otherwise streamline the text. OSHA anticipates providing the decision logics separately to serve as guidance, but has not included them in the regulatory text. Are there any additions, subtractions, or clarifications of the classification criteria from the GHS that OSHA needs to consider?

AIHA has no comment.

11. Certain physical hazard classification criteria (i.e., for self-reactive chemicals, organic peroxides, self-heating chemicals, explosives) either directly reference packaging or quantity, or rely on test methods that reference packaging or quantity. The criteria were developed for transport concerns. Clearly, quantity and packaging can greatly affect safe transport of chemicals that pose hazards such as those listed above. However, OSHA seeks comments on whether the criteria as stated in the GHS are appropriate for the workplace. Does use of these criteria present any obstacles to classification or create any difficulties for suppliers or users of chemicals? Describe any difficulties these criteria may present and any suggestions for addressing these issues, particularly recommendations that would be consistent with the GHS and maintain the GHS level of safety for these chemicals.

AIHA has no comment.

12. The GHS gives countries guidance on a cut-off or concentration limit for chemical mixtures containing target organ toxicity hazards. In Appendix A, Section A.8.3, OSHA is proposing to make the suggested 20% concentration limit mandatory so that label preparers are clear on what needs to be done. Please comment on whether this mandatory concentration limit is appropriate. If you have an alternative, please provide it along with the rationale.

AIHA supports the mandatory 20% cut-off for target organ toxicity hazards and agrees that a mandatory limit will provide MSDS and label authors with clarity on the requirements and will result in consistent classification of mixtures. Consistent hazard communication is a key benefit of adoption of the GHS into the US Hazard Communication Standard and having optional cut-offs for any hazard class will eliminate that benefit. Adopting the GHS recommended cut-off rather than another cut-off should also benefit chemical manufacturers since it is likely that most countries who adopt a mandatory limit will also select the recommended value to promote harmonization.

Labels

13. The proposal would require pictograms to have a red frame. As discussed in Section V, OSHA believes that use of the color red will make warnings more noticeable and will aid in communicating the presence of a hazard. However, the GHS gives competent authorities such as OSHA the discretion to allow use of a black frame when the pictogram appears on a label for a package which will not be exported. For packages that will not be exported, should the modified standard allow black frames on pictograms, or should the pictogram frame be required to be presented in red?

AIHA supports the requirement for the pictograms to have a red frame and believes that making the pictograms more noticeable promotes the safe use of chemicals.

14. In addition to the pictograms, signal word and hazard statements, GHS labels must include precautionary statements. OSHA is proposing to require the text in the precautionary statements in the GHS to be on HCS labels. As discussed in Section XV Summary and Explanation of the Proposed Standard, these statements are codified under the GHS, meaning that numbers have been assigned to them. In addition, the appropriate statements to use for each hazard class and category have been indicated in the GHS annexes. This means that label preparers will know exactly what precautionary statements to apply once they complete their hazard classification, and chemical users will see consistent language on

labels to indicate the necessary precautionary measures. However, the statements are not yet considered to be part of the harmonized text like hazard statements are; rather they are included in the GHS as a suggested language. OSHA expects that other countries may adopt the codified precautionary statements when they put GHS in place. For example the EU has required that labels use the GHS

codified precautionary statement text in adapting the GHS. Since OSHA did not previously require the use of precautionary statements, and had no such recommended statements to provide, the Agency is proposing to use those currently in the GHS as the mandatory requirements with the option of consolidating statements where appropriate (See Appendix C). OSHA anticipates this approach will provide the maximum benefit. OSHA is also seeking comment on whether any of these statements should be modified or if other precautionary statements should be included. In addition, as discussed in Section IV, OSHA has presented other alternatives with regards to precautionary statements, and OSHA is soliciting comment on these options as well. Specifically, OSHA is seeking feedback on whether the Agency should include the GHS precautionary statements as nonbinding examples, through a non mandatory appendix or guidance, rather than as required statements, or whether OSHA should allow label preparers to develop their own precautionary statements rather than specifying the text to be used.

AIHA supports the approach OSHA has taken to require the GHS precautionary statements to be on HCS labels and does not believe other alternatives, such as nonbinding examples or individually derived precautionary statements, place less burden on business without significantly compromising worker health and safety. Adding required and consistent precautionary statements to labels, based on the hazard classification, will provide guidance for chemical handling that might not otherwise be communicated to workers. Label preparers should find it easy to provide that guidance as they have already been required to determine the hazard classification and the inclusion of required precautionary statements simply follows on a prescriptive basis. The use of these statements on a voluntary or individualized basis will compromise worker health and safety since it leads to an inconsistent approach to HCS labeling and, as demonstrated by historic compliance activity, this information may not otherwise be communicated to workers. However, there will be circumstances (such as type of packaging or the lack of possible exposure) where certain precautionary statements based strictly on the hazard classification are not appropriate and could detract from the goal of good guidance for workers. Therefore a risk assessment approach for inclusion of precautionary statements in these limited circumstances should be allowed when supported by an appropriate process shown to be protective of worker health and safety.

15. OSHA has not proposed to require the exploding bomb pictogram or specific precautionary statements for Division 1.4S ammunition and ammunition components because the specified GHS label elements may not accurately reflect the hazards of these materials. Is this sufficiently protective? Are any adjustments to the label elements for Division 1.4S ammunition and ammunition components necessary? Describe any requested changes and explain why such revisions are necessary.

AIHA has no comment.

16. In the current HCS, OSHA has a provision that requires labels to be updated within three months of obtaining new and significant information about the hazards. The Agency has not been enforcing this provision for many years, and there has been an administrative stay on enforcement. OSHA is including the provision in this proposal, and

inviting comment on it with the intention of including it in the final rule and lifting the stay. Is three months the appropriate time interval for updating? Are there any practical accommodations that need to accompany this limit (for example, related to stockpiles of chemicals)? Provide any alternatives you consider appropriate, as well as documentation to support them.

AIHA believes there should be a time interval for label updating when new and significant information about the hazards becomes known, however without enforcement of this provision the appropriate time interval becomes a moot point. Historically there has been little enforcement activity with regard to HCS authoring of labels and material safety data sheets. AIHA encourages OSHA to place more emphasis on this enforcement activity, which was previously difficult due to the performance-oriented nature of the HCS. This revision of the standard, which makes authoring more prescriptive and therefore more consistent, should also create an opportunity for authors to more easily understand what needs to be included in a label or SDS. Subsequently, it should also make it easier to determine if authoring was not performed in compliance with the HCS so opportunities for additional training of authors can be identified and, if necessary, enforcement activity can be increased around appropriate HCS authoring of labels and SDSs.

Safety Data Sheets (SDSs)

17. As discussed in Section XV, the Agency is proposing to require that OSHA permissible exposure limits (PELs) are included on the SDS, as well as any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the safety data sheet. OSHA welcomes comments on this approach, along with an explanation of the basis for your position.

AIHA is aware that to bring the HCS in compliance with the GHS the HCS would no longer include a requirement to include the Threshold Limit Values (TLVs) but would still include a mandatory reference to the Permissible Exposure Limits (PELs). Yet in the proposal OSHA provides an option for chemical manufacturers, importers or employers preparing the safety data sheet to “include other occupational exposure limits used or recommended”. What AIHA can not understand is that if the agency provides this as an option, then the agency should take this one step further and add a non-mandatory appendix to the HCS to include reference to the TLVs and other occupational exposure limits such as the Workplace Environmental Exposure Levels (WEELs).

AIHA first made this request when we provided comments on the ANPR in November, 2006 in support of the GHS approach. AIHA has several rationales for making this recommendation.

- Including only references to OSHA PELs raises many concerns. OSHA PELs have not been updated in years (many are 40 years old) and do not reflect the latest guidance or best understanding of what is acceptable exposure. Furthermore, OSHA PELs are derived with scientific, technological feasibility and economic considerations. TLVs and WEELs do not consider economic and technological feasibility, but remain the most robust exposure guidance for chemicals available today.

- TLVs, WEELs and other occupational exposure limits play an important role and provide guidelines for industrial hygienists to use in making decisions regarding safe levels of exposure to various chemical and physical agents found in the workplace.
- Hazard classification under the GHS is based on review of the available data and is not based on lists of hazardous chemicals. However, the adjustment to this shift in approach to hazard determination will take some time and employee protection will be enhanced by continuing to require OSHA PELs in the HCS and providing a non-mandatory appendix that would reference TLVs, WEELs and other occupational exposure limits.
- Removing TLVs from the HCS and not including these and other occupational exposure limits as references would go against existing uses by others in the federal government. As an example, Department of Energy (DOE) Orders (in the past) and DOE regulations (10CFR851) at this time specifically state that TLVs are to be used in preference to PELs. In addition to DOE regulations and the existing use of TLVs in the HCS, many colleagues abroad have historically relied on the TLVs and WEELs for their basic guidance.

AIHA respectfully requests the agency to reconsider its “option” for manufacturers to include other occupational exposure limits and amend the proposal to state that TLVs, WEELs and other occupational exposure limits will be included as a non-mandatory appendix to the HCS.

In addition, AIHA respectfully requests OSHA to work with stakeholders to address the issue of updating the PELs so that employees and employers no longer must rely on outdated PELs to protect workers.

18. OSHA is proposing that Section 15 of the SDS be non-mandatory. As indicated in Appendix D, Section 15 addresses regulatory information concerning the chemical. OSHA is considering requiring the substance specific standards be referenced in this section, which would make Section 15 mandatory. Would employers and employees benefit from having this information in this section of the SDS?

AIHA supports the inclusion of a reference to relevant substance specific standards in Section 15 of the SDS, which would make this section mandatory. This section is typically included anyway by the majority of current HCS authors and the inclusion of information about relevant substance specific standards in this section would improve awareness of these standards and therefore worker health and safety, as well as promoting consistency with regard to the location and content of this information.

Other Standards Affected

19. OSHA is proposing to align the definitions of the physical hazards to the requirements of the GHS categories in safety standards for general industry, construction, and maritime standards, which either directly reference the HCS or provide information pertinent to the Safety Data Sheets (SDSs). In most cases OSHA has modified the standards to maintain scope and protection. However, the changes in definitions for flammable liquids Category 1 and 2 and flammable aerosols appear to be more than simply rounding to the nearest significant number.

- Flammable liquids Category 1 and 2: The boiling point cut-off for Category 1 is reduced from 100 deg F (37.8 deg C) or less to 95 deg F (35 deg C) or less, which could shift some liquids from Category 1 to Category 2.

- Flammable aerosols: OSHA is proposing to adopt the GHS method to determine flammability rather than the method defined by the Consumer Product Safety Commission (CPSC). OSHA's decision to change these definitions to be consistent with the GHS is based not only upon harmonizing its standards with those of other countries that have adopted or may adopt the GHS, but OSHA is also concerned with making its standards internally consistent. OSHA believes the methods used to classify these physical hazards are similar enough so that substances that are currently regulated by OSHA would continue to be regulated and that few, if any, changes would result in a shift in regulatory coverage. Would the proposed changes have any impact on your operations? If so, describe the anticipated effects.

AIHA agrees with aligning the definitions of the physical hazards to the criteria of the GHS categories in the safety standards for general industry, construction, and maritime standards. Changes to the classification of flammables will affect compliance with the local and state fire code; however this will enable all regulated sites to be as consistent as possible with international regulations to ensure consistency of information provided by manufacturers who are involved in the global marketplace. AIHA supports standards to be both consistent across the OSHA Standards as well as internationally to avoid unnecessary testing.

20. OSHA is proposing to eliminate the term "combustible liquid" in 29 CFR 1910.106, 1910.107, 1910.123, 1910.124, 1910.125, and 1926.155 for liquids with a flashpoint above 100 °F. To reflect consistency with the revised HCS where appropriate, OSHA is proposing to add the specific flashpoint criteria. This will maintain equivalent protection. Are there other standards that OSHA should update with the new terminology?

AIHA supports eliminating the term "combustible liquid" to assure consistency with the revised HCS and international harmonization.

21. OSHA is proposing to modify the language required on signs in substance-specific health standards. The Agency developed the proposed language to reflect the terminology of the revised HCS while, at the same time, providing adequate warning through language that is consistent with the current sign requirements for these chemicals. An added benefit is the hazard warnings on signs specified for these standards will now be consistent throughout OSHA standards. For example, all carcinogens will now bear the hazard statement "MAY CAUSE CANCER". OSHA believes that providing language that is consistent on both signs and labels will improve comprehension for employees. Does the proposed language on signs accurately convey the hazards?

AIHA supports the modification of the language required for signs and labels to bear the same hazard statements which are required for all chemicals of the same classification. AIHA believes that requiring HCS standard warning language for all chemicals classified in a hazard class/category, whether they are covered by a specific standard or not, is consistent with the intent of the GHS and the goal of harmonization. Consistent language will also provide employees with clearer warnings and should improve comprehensibility. This will allow the worker to better protect themselves against the hazards since the hazardous chemical will be easier to identify on the label and the warning more conspicuous.

22. OSHA is proposing to revise the substance-specific health standards' provisions on labeling for producers and importers of chemicals and substances. Currently in the substance-specific standards OSHA requires specific language on labels for certain chemicals. OSHA is proposing to change these labeling requirements by referring those responsible for labeling to the modified HCS and including in each substance-specific standard a list of health effects that must be considered for hazard classification. The modified HCS will dictate the specific language (i.e., signal word, hazard statement(s), and precautionary statement(s)) that is required on labels through the classification process. However, OSHA is proposing to maintain specific language for labels on contaminated clothing and waste/debris containers to ensure adequate hazard communication for the downstream recipients. How would the removal of required language for labels from substance-specific standards affect your work place? Are there hazard warnings that will be lost that do not have an equivalent hazard or precautionary statement? Are there alternatives to OSHA's approach for the substance-specific standards that will assure information is disseminated in a manner that is consistent with the modified HCS labeling requirements?

AIHA supports OSHA's proposal for the substance-specific standards to retain required language for labels on contaminated clothing and waste/debris containers to ensure adequate hazard communication for downstream recipients. Workplace contaminated materials are not hazardous chemicals in commerce and having special labeling requirements for these is not inconsistent with the goal of harmonization. Since recipients of these materials are accustomed to these specific warnings, changing the warning statements to HCS standard statements might be perceived as a change in hazard and lower protection for those workers.

23. In determining the health hazards that need to be considered by manufacturers, importers and distributors when classifying chemicals regulated by the substance-specific standards, OSHA is proposing to primarily rely on the determinations made by the Agency in each rulemaking, the NIOSH Pocket Guide to Chemical Hazards (2005) and the International Chemical Safety Cards, and use as a secondary source the health effects identified by the European Commission (2007). OSHA is proposing to include a health hazard only if it is identified as such by two or more of these organizations. Are there other sources of information that OSHA should consult?

Chemicals that are covered by substance-specific standards should not be classified any differently than any other chemical in regard to the health hazards included on a label or SDS. Hazard determination should not be limited to the noted references for these or any other chemical. These references can be used in addition to other available hazard information in order to make a weight-of-evidence decision. The noted references do not provide the detailed background information needed to make a hazard determination in the absence of additional information. The hazards identified by OSHA in substance specific standards should be "considered" by manufacturers when classifying the substances and mixtures they produce, but should not be mandatory. OSHA should consider additional references such as ATSDR Toxicological Profiles, IRIS Toxicological Reviews, EHC Monographs, CICADS, OECD SIDS, and Patty's Toxicology.

24. As detailed in the Summary and Explanation section of this document, OSHA is not proposing in this rulemaking to update the electrical standards (general industry 1910 subpart S and construction 1926 subpart K) or Explosives and blasting agents (general industry 1910.109

and construction 1926.914). These subparts are "self-contained" in that they do not rely on other OSHA standards for regulatory scope or definitions, but reference external organizations (such as the National Fire Protection Association [NFPA]). OSHA believes that these standards could be updated when the referenced external organizations adopt applicable GHS elements. If OSHA were to change these standards to comply with the GHS, how would this impact your operations?

AIHA has no comment.

Effective Dates

25. OSHA has proposed to require that employers train employees regarding the new labels and safety data sheets within two years after publication of the final rule to ensure they are familiar with the new approach when they begin to see new labels and SDSs in their workplaces. Is the proposed time appropriate?

AIHA supports the proposed implementation schedule. Three years should be adequate time for manufacturers and importers to revise their MSDS and labels but not so long as to be difficult for employers and employees. AIHA agrees that having two very different systems in the workplace for a prolonged period would adversely affect safety. AIHA also agrees that employees will require training on the new MSDS and labels before they appear in the workplace. It is hoped that employers will conduct this training in a timely manner but AIHA agrees that two years is reasonable to permit employers time to modify their internal training programs and for commercial training materials to be developed.

26. OSHA has proposed that chemical manufacturers, importers, distributors, and employers be required to comply with all provisions of the modified final rule within three years after its publication. Does this allow adequate time to review hazard classifications and amend them as necessary, and to revise labels and safety data sheets to reflect the new requirements? Would a shorter time frame be sufficient?

AIHA has no comment.

27. Are there any other factors that should be considered in establishing the phase-in period?

AIHA has no comment.

30. Alternative Approaches

AIHA supports a comprehensive, universal and mandatory hazard communication standard that fully adopts the GHS as proposed. Permitting voluntary use of some or all of the system, adopting the hazard communication elements without the underlying criteria or exempting certain sectors based on business size or other criteria will defeat the purpose of revising the Standard and of the GHS. If employers and employees cannot have confidence that labels and MSDS provide a consistent safety message superficial standardization will not improve safety. Safety is also seriously compromised if different hazard communication systems are present in the work area. Effective training is not possible if pictograms and hazard statements are not used

in a consistent manner. Chemical manufacturers and importers will lose all the benefits that come with a harmonized classification and labeling system with a piecemeal adoption. All of the approaches discussed will create competitive pressures that can affect classification decisions and make good and consistent hazard communication more difficult.

Other Specific Areas for Consideration

Elimination of the floor of hazardous chemicals and reference to lists of carcinogens.

AIHA believes that the classification criteria in the proposed standard is adequate to result in consistent hazard classification and supports the elimination of any list based classification approach. Using a full data review and application of the substance and mixture rules is a superior approach to hazard classification and eliminates the need to keep a list up to date with the most recent information.

Should Category 5 data be included in the calculation of the acute toxicity of mixtures. (50394)

AIHA has no comment.

Combustible dust definition (see page 50395)

AIHA feels that it is important for OSHA to work with the international community to develop criteria for combustible dust as part of the GHS regulations. We support and encourage OSHA's efforts to do this. Until that is accomplished and adopted into the HCS, combustible dusts should be addressed by clear guidance and inclusion as an unclassified hazard. This will allow appropriate hazard communication on the serious hazard while retaining the spirit of global harmonization intact. Until there is a standard in place, manufacturers must continue to be steadfast in their evaluation of all hazards of their products, including downstream use and the potential for a combustible dust hazard to develop due to conditions of use.

Development of a database of classifications (50396)

AIHA supports any activities that improve the quality and consistency of hazard communication and believes the development of a database of classifications should be considered if it will truly accomplish that purpose. AIHA expects that such a database would be of great value to the variety of businesses, especially small to medium size enterprises, required to author HCS documents. However, a database that is developed without the resources necessary to make it scientifically robust and kept up-to-date may actually compromise worker health and safety and so AIHA encourages OSHA to only undertake this development if it will be adequately resourced. Considering this may be difficult, a more feasible alternative equally as effective might be to direct resources toward Hazard Communication authoring education (especially for small to medium sized enterprises), which should encourage accurate self-classification promoted in the GHS.

Exposure limits on MSDS see 50401 – TLVs are not specified.

OSHA has decided to maintain the requirement to include its mandatory permissible exposure limits (PELs) on the SDSs, and to specify, as in the existing HCS, that manufacturers should include "any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the safety data sheet." This will allow inclusion of any of the different types of occupational exposure limits commenter's recommended for inclusion where the SDS preparer deems it appropriate. It also helps to minimize differences between the U.S. and other countries by not providing (except for PELs) a list of U.S.-specific occupational exposure limits that must be included, yet provides protection for employees by allowing inclusion of various recommendations that will help employers design appropriate protective measures.

As discussed earlier in these comments, AIHA has serious reservations about the requirement to include permissible exposure limits (PELs) on the SDSs and eliminate reference to Threshold Limit Values (TLVs) as currently found in the HCS. AIHA is aware the agency "allows inclusion" of any of the different types of occupational exposure limits such as Workplace Environmental Exposure Levels (WEELs) and other occupational exposure limits. However, AIHA is not clear why the agency did not take this recommended option one step further and provide for a non-mandatory appendix that would reference TLVs, WEELs and all other occupational exposure limits. This appendix would provide chemical manufacturers, employers and employees' guidance in determining what is or is not an acceptable risk to hazards. These references and guidance would not be required for chemical manufacturers' distribution of their products either domestically or internationally, but would provide the latest data to assist in controlling exposure. AIHA believes providing a reference to all occupational exposure limits would be the prudent approach to provide the utmost information and protection to workers.

Employee Training

In addition, OSHA is proposing that employers train or re-train employees regarding the new labels and safety data sheets within two years after the rule is promulgated. The Agency believes that the training needs to be completed by the time employees begin to see labels and safety data sheets with the new information on them, rather than waiting until after the transition has been completed. Comment is invited on this approach.

AIHA agrees that employee training should be provided in the workplace as soon as possible after the final standard is issued. The new hazard communication elements require training to be effective and further the goal of improved safety in the use of chemicals. Two years will not be sooner than the new labels and SDS appear in the workplace but AIHA agrees that employers need to be given reasonable time to develop and implement the required training.

December 29, 2009