



May 19, 2021

Ms. Maureen Ruskin
Acting Director
Directorate of Standards and Guidance
Occupational Safety and Health Administration
Ruskin.maureen@dol.gov

Submitted via regulations.gov.

RE: Hazard Communication Standard – Proposed rule; request for comments. 86 FR 9576. February 16, 2021. Docket OSHA-2019-0001.

Dear Ms. Ruskin:

RISE and CropLife America (CLA) provide the following comments to the Occupational Safety and Health Administration (OSHA) on the Notice of Proposed Rulemaking (NPRM) to modify the Hazard Communication Standard (HCS) to conform with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Revision 7. We appreciate the Agency's intent, through this rulemaking, to address issues that arose during the implementation of the 2012 update to the HCS and provide better alignment with other U.S. agencies and international trading partners. We commend the Agency for its goal to assure safe and healthy workplace conditions and its purpose of providing a standardized approach for communicating workplace hazards associated with exposure to hazardous chemicals.

In addition to OSHA, we also promote workplace health and safety and align with the fundamental goal of HCS which is to identify, understand, and communicate the hazards associated with chemicals prior to worker exposure. We also support a clear and consistent approach to communicating information on workplace hazards. Unfortunately, the GHS and OSHA requirements for the safety data sheets (SDS) do not align with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labeling requirements and this leads to confusion on hazard warnings as there are inconsistent approaches to communicating safety information on FIFRA regulated product labels versus the SDS. Hence, we continue to align with our longstanding position that FIFRA regulated pesticide products should be exempted from OSHA's SDS requirements.

We strongly defend the EPA-approved label, based on the FIFRA regulatory scheme, which requires toxicity testing and then the development of labeling and application instructions that communicate chemical hazard information along with the establishment of risk-based permissible uses and application procedures. Ultimately, we want to minimize further changes to hazard classification, proposed in this rulemaking, that would exacerbate further misalignment between the FIFRA label and the SDS. In addition, the proposed amendments to the content of SDS and labels¹ do not enhance worker safety but instead add onerous requirements. Our recommended changes offer a practical approach to this rulemaking and minimize further misalignment between the FIFRA regulated label and the SDS. In addition, we have proposed a more achievable implementation strategy that will not distract resources from the protection of worker health and safety.

To align with GHS revision 7, OSHA is proposing amendments to the content requirements for SDSs and labels to include: a) identification of hazards associated with a change in physical form; b) identification of hazards that can occur under normal conditions of use as a result of a chemical reaction; c) changes to physical and chemical information requirements, including requiring information on particle size and characteristics; d) identification of hazards on interactions with other chemicals; e) a description of how toxicological information was derived; f) and changes to various hazard and precautionary statements. We request OSHA revise this rulemaking, so the new SDS content is strictly optional and not required. However, if OSHA proceeds with additional content amendments for SDS being mandatory, we request the requirements only apply to a new SDS issued, along with an SDS revised due to other reasons, after the rule's compliance date. Regulated entities should not be required to retroactively update all SDS to comply with rule's requirements by the rule's compliance date, as all SDS will be updated over time with other updates. This compliance strategy is more achievable and does not distract resources away from protecting workplace health and safety.

More specifically, OSHA is proposing changes to section 2 of the SDS to emphasize that hazards identified under normal conditions of use that result from a chemical reaction must appear on the SDS. While we request this provision be made optional on the SDS, we propose clarifying revisions. The current regulatory text states:

§1910.1200(d)(1) Hazard Classification: 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.

This text for the classification of hazards appears to apply to any possible number of chemical reactions that could occur under normal conditions of use, including other chemicals the product may be intentionally or inadvertently combined with or exposed to. The draft language is so broad that it would be difficult, if not impossible to implement, even if this provision were optional. The broad scope of the hazard classification regulatory text in §1910.1200(d)(1) has the potential to

¹ Labels for FIFRA-registered pesticide products are exempted from OSHA's HCS requirements.

undermine the validity of the current classification of chemical hazards; therefore, distracting readers of the SDS from the actual hazards in their immediate workplaces, which should be their primary focus.

Hence, even though the proposed hazard classification obligations outlined in § 1910.1200 (d)(1) should remain optional under section 2 of the SDS, we propose the following edits to the regulatory text:

§1910.1200(d)(1) Hazard Classification: 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 that occurs under the conditions of the approved use directions on the product's label.

Our revision to this regulatory text narrows the scope of the hazard classification and provides clarity so the provision can be more readily implemented without over classification of the chemical hazards.

Additionally, we appreciate the Agency's proposal to allow withholding a chemical's concentration range from the SDS as trade secret and commend the Agency for aligning this proposed requirement with its trading partner, Canada. However, requiring all regulated entities, who would like to claim trade secrecy for the concentration on the HCS, to utilize the prescriptive ranges outlined in this rulemaking would be resource intensive and have a negligible return on workplace safety. Hence, we request the use of the concentration ranges, outlined in this rule, be an optional provision, for those regulated entities that want to claim trade secrecy on the SDS.

Lastly, we want to emphasize the labeling requirements of the HCS do not apply to pesticide products regulated under FIFRA. This fact is clearly articulated in footnote 45 (p. 9654 of the proposed rule) which is as follows:

In principle, pesticide manufacturers would also be affected by the proposed revision to the standard, but pesticide labeling in the United States is covered by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.).

However, *Table VII-5: Labels and SDS Affected by OSHA's Proposed Revisions to the HCS*, lists over 23 million labels affected by this revision for the industry, *Pesticide and Other Agricultural Chemical Manufacturing*. We request clarification on the rationale for over 23 million labels for the pesticide industry affected by the revisions in this rulemaking as this is incongruent with the fact that labels for FIFRA-registered pesticide products are exempted from OSHA's HCS requirements and the statement in footnote 45 of this rule.

In summary, the regulatory burden of this rulemaking is not insignificant to the pesticide industry. While the fundamental structure of the HCS is not changing, the revisions will require substantial updates to the SDS for virtually every registered pesticide product but will not materially aid in

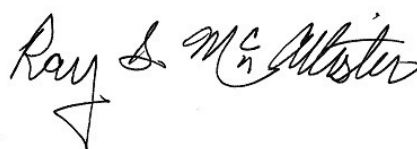
the communication of chemical hazard information or further improve worker protection. We strongly urge the Agency to revise the proposed amendments to the SDS, outlined in this rulemaking, from requirements to optional provisions. If the Agency proceeds with requiring these amendments to the SDS for pesticide products, significant changes will be required for the databases and software systems that generate the SDS. Hence, due to the complexity of the currently proposed amendments we request that (a) compliance only apply to a new SDS issued, along with an SDS that is revised due to other reasons, after the rule's compliance date; or (b) a compliance date be established for five years after the final rule's effective date for chemical mixtures. This approach would allow the regulated community an opportunity to achieve compliance and not distract critical resources away from workplace health, safety, and protection.

To conclude, we strongly defend the EPA approved label which includes specific warnings and limitations on use to protect the users of the product. Fundamental to EPA's decision to register a pesticide under FIFRA is a thorough risk assessment of the potential risks associated with the product---not just to applicators of pesticides but also to all workers and bystanders in an occupational setting. On behalf of the broader chemical industry, we strongly urge the Agency to take an approach to this rulemaking which will not further increase the conflict between the SDS and the EPA approved label nor distract attention from the specific warnings communicated through the EPA approved label for pesticides.

Thank you for reviewing our comments, and please contact us with questions or for more information.

Sincerely,

Megan J. Provost
President
RISE (Responsible Industry for a Sound
Environment)
4201 Wilson Boulevard, Suite 700
Arlington, VA 22203
(202) 872-3861



Ray S. McAllister
Senior Director, Regulatory Policy
CropLife America
4201 Wilson Boulevard, Suite 700
Arlington, VA 22203
202-872-3874

RISE is a national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.

Established in 1933, CropLife America (www.croplifeamerica.org) represents the developers, manufacturers, formulators, and distributors of plant science solutions for agriculture and pest management in the United States. CropLife America's member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers.
