

ACC/OMB Meeting: OSHA HazCom Final Rule
January 19, 2012

ACC submitted extensive comments to OSHA in November 2009 and testified in April 2010 on OSHA's NPRM to modify the existing Hazard Communication Standard (HCS) to conform to the United Nation's Globally Harmonized System (GHS) for Classification and Labeling of Chemicals (copy provided).

OSHA should finalize the GHS rule as quickly as possible as GHS is already being implemented globally and to help provide business certainty. ACC supports efficient implementation of the GHS for workplace chemicals with appropriate modification of OSHA's HCS as described below.

- **Benefits of GHS** – ACC member companies would realize benefits from the rule as it would provide: (1) overall cost reduction long term; (2) decreased time to market because of the presumed need to classify a product only once for the global market; (3) increased opportunity to make in-country regulation more consistent; (4) greater consistency of SDS globally; and (5) promotion of trade facilitation.
- **Trade Facilitation** – The implementation of GHS could contribute to the Administration's goal of doubling U.S. exports under the National Export Initiative. GHS is often promoted as a means of trade facilitation potentially simplifying the opportunity to trade internationally. In ACC's view, many countries in many different regions are looking to the U.S. for leadership in GHS implementation, particularly given the experience of the U.S. in workplace hazard communication. U.S. leadership will help promote consistent implementation among our trading partners and will help U.S. interests realize the full benefits of a globally harmonized system.
- **Coordination with Other U.S. Agencies** - GHS implementation in the U.S. should be synchronized, to the extent feasible, among all responsible agencies. At a minimum, OSHA should ensure that the revised HCS does not create irresolvable conflicts with the classification and labeling provisions of other agencies' regulations. OSHA should work closely with other governmental agencies (e.g., EPA, CPSC, DOT) that could be impacted by OSHA's implementation of GHS to facilitate consistent and synchronized implementation. Domestically, a coordinated effort on hazard communication activities in the U.S. would be practical. An unintended consequence of OSHA moving ahead of the other agencies is the potential for overlapping or conflicting labeling requirements, for example:
 - *US EPA - FIFRA Pesticide SDS* – The ACC Biocides Panel and CropLife America have already briefed OMB on this issue and recommended that OSHA completely exempt all aspects of pesticides from its GHS regulation.
- **Effective Dates** - ACC recommends that OSHA consider a 5-year transition period to the new GHS requirements and consider a phase-in approach for substances and mixtures – 3 yrs. for substances and 2 more yrs. for mixtures. Substances need to be classified first before those classifications can be applied to mixtures. This does not prevent companies from voluntarily classifying their substances or mixtures earlier. “During the transition period, employers would be required to be in compliance with either the existing HCS or the modified GHS, or both.”
- **Building Blocks** - ACC strongly supports OSHA's intent to maintain the scope, application, exemptions, and interpretations of the current HCS. OSHA can help minimize the burden on industry by excluding the aspiration hazard and adopting only those components of the GHS that match existing HCS provisions.
 - *Aspiration Hazard* – ACC believes that OSHA should not adopt the aspiration hazard class because it is not considered a workplace hazard.
 - *Cut-offs* - ACC has urged OSHA to reconsider its proposed cut-offs (i.e., reproductive toxicity and respiratory/skin sensitizers) because they are not scientifically-based. In addition, they are likely to lead to overwarning and therefore confusion which could compromise worker protection. The current OSHA HCS has a 1% mixture cut-off value that has been protective for

over 25 years. ACC recommends that OSHA adopt the cut-off values/concentration limits for reproductive toxicity and for respiratory/skin sensitizers that are closest to the current scope of the HCS.

- **Unclassified Hazards** - ACC agrees in principle with the approach of using “Hazards Not Otherwise Classified” (HNOCs) rather than the term “Unclassified Hazards” as long as definitions and criteria for inclusion in this category are clearly identified. Additional recommendations include:
 - *Combustible dust* - ACC recommends that OSHA not include this material as an unclassified hazard because it is a processing issue (extrinsic, use-specific) and not an intrinsic product hazard. If a chemical is shipped in a dust form, the SDS should state whether the material as shipped has the potential to explode under certain conditions. The product should not be classified as hazardous under OSHA or require a label. Because the conditions under which a customer may use the product are varied and cannot be predicted by the manufacturer, no additional information can be provided on the SDS. The physical form, as shipped, is most important with regard to SDS statements as almost any carbon-containing or metal-containing solid could be combustible dusts if processed to small enough particle size.
 - *Other hazards* to be considered for which criteria should be developed and added include: pyrophoric gases, static accumulators, and release of gases that are health hazards.
- **Labeling**
 - *Precautionary Statements* – OSHA should require the presence of precautionary statements, but not mandate the text used. Appendix D of the NPRM inappropriately includes all the assigned precautionary statements as required label elements. This is inconsistent with the GHS and these statements have not been the subject of international negotiation specifically because they were provided by GHS as guidance, not as mandatory text. OSHA’s intent is to be consistent with the GHS. Since the GHS treatment of these statements is as guidance only, OSHA should consider them as such. ACC supports flexibility in the text used in the GHS precautionary statements, and OSHA should allow label preparers to develop their own precautionary statements.
 - *Updating Labels* - A minimum of 6-12 months is needed to update labels after becoming newly aware of any significant information regarding the hazards of a chemical. Three months is too aggressive to get new labels designed, translated, approved and printed affecting SMEs as well as large corporations.
 - *Pictogram Frames* - ACC supports the option to use the black pictogram frame on domestic packages. ACC supports OSHA’s acceptance of the flexibility in GHS to use either black or red pictogram frames on packages shipped domestically. OSHA should allow the black GHS pictogram frame domestically thereby saving printing costs and placing fewer burdens on small companies that might only have domestic business.
- **GHS Classification Database** – Any database of chemical classifications should be for reference only and not mandatory.
- **Process for US Stakeholder Input into GHS Revisions at UNSCEGHS** - OSHA needs to develop a process similar to U.S. DOT PHSMA to obtain U.S. stakeholder input into the development of U.S. technical positions that are taken in negotiations on revisions to the UN GHS “Purple” Book. The absence of a mechanism for USA stakeholders to give comments on the UNSCEGHS papers at each meeting of the UNSCEGHS bypasses the US notice and comment process required by the Administrative Procedures Act (APA) in deference to international negotiations/rulemaking.

For example, OSHA should not agree to criteria and definitions for combustible dust and simple asphyxiants at the UNSCEGHS without having adequate notice and comments from US stakeholders. This process is a key consideration in OSHA adopting the GHS. OSHA’s final rule is based on the Third Revised Edition of the GHS. The Fourth Revised Edition of the GHS has already been published and the Fifth Edition is being developed.