

PLASTICS Testifies on OSHA Hazard Communication Standard

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Occupational Safety and Health Administration

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Thank you, Your Honor. Good afternoon, and thank you for this informal hearing on proposed revisions to the Hazard Communication Standard. My name is Marie Gargas, and I am with the Plastics Industry Association. We are the only organization supporting the U.S. plastics supply chain, representing thousands of workers committed to safety and health who generate or use chemicals subject to the HCS.

PLASTICS supports increased global harmonization of chemical hazard communication and appreciates some of the proposals OSHA made in its [notice of proposed rulemaking](#) (NPRM); however, we believe modifications are needed to better serve OSHA's objectives without lowering the standard's overall protections. Specific suggestions are offered in [comments](#) we submitted in May.

First, we believe OSHA's proposed revisions to the scope of the hazard classification at paragraph (d)(1) go beyond a clarification. It would pull in hazards posed by all downstream reactions, and reaction products, of a chemical in the U.S.—including planned reactions and reaction products, intermediates, products of upset conditions, by-products, and decomposition products, as well as hazards of “foreseeable emergencies” involving the chemical and including those resulting from all downstream chemical reactions. This would depart from the current regulatory scheme, and shift responsibility for identifying the hazards of downstream chemical reactions and their products from the downstream manufacturer (that designs, builds and operates a process), to every upstream supplier of any of the chemicals used.

We believe the history of the HCS does not support this is a clarification. From promulgation through the last revision, the scope describes a “foreseeable emergency” in a covered employer's own facility, not hazards in another employer's facility. The scope of the hazard determination/classification speaks to chemical manufacturers and importers evaluating chemicals produced in their workplaces or imported by them. That language is key. OSHA guidance, in response to comments, was finalized without a proposed statement that downstream uses should be anticipated and contained no other similar requirement.

Shifting our view forward, we believe this proposed revision would undermine the HCS. For chemicals with broad uses across industrial sectors, a safety data sheet (SDS) would have to

*additionally include countless chemical reactions and reaction products under normal conditions of use, as well as foreseeable emergencies. **We would not want chemical users to be overwhelmed or confused by excess warnings irrelevant to their use of a chemical.***

***Ultimately, the downstream user, often not a direct customer of a supplier, is best positioned to determine the potential or expected interactions with other chemicals in the facility and what would be considered a foreseeable emergency in its facility.** We respectfully request that OSHA refrain from requiring upstream chemical manufacturers to classify their chemicals based on the hazards of downstream chemical reactions and reaction products. If OSHA retains any such provision, we ask that OSHA revise proposed (d)(1) and we offered suggested wording in our written comments.*

*We also request clarification on the preliminary determination of the **costs and burdens**. For example, we believe the proposed changes to (d)(1) would, in effect, require each supplier of a chemical to perform a process hazard analysis (PHA) of the type required by OSHA's Process Safety Management (PSM) Standard. This would **create a scenario as if the PSM Standard applied to all hazardous chemicals, and not a threshold quantity of a limited set of highly hazardous chemicals. This would apply PSM to every facility conducting a chemical reaction involving a hazardous chemical and add a PHA requirement to the HCS to apply to every process involving a hazardous chemical.** Upstream manufacturers generally do not have access to information to identify each downstream chemical reaction involving its chemical, and the products of those reactions. OSHA most recently estimated the total cost of collecting the required process safety information and the paperwork burden of performing a required PHA as approximately \$21,000 per covered establishment. Using other OSHA estimates, the initial cost of just the paperwork burden would be approximately \$210 million. Instead of approximately 10,000 PHAs under PSM, OSHA would now require an undetermined number for nearly one million hazardous chemical products it estimated to be in U.S. workplaces, plus all "foreseeable emergencies," which may produce new chemicals. We do not see that OSHA has estimated the cost of such an effort and **cannot imagine this is OSHA's intent.** It would also run counter to reducing costs and burdens while also improving the quality and consistency of information.*

*For definitions, **we respectfully request that OSHA adopt the National Fire Protection Association definition for "combustible dust," or continue to rely on it while leaving the term officially undefined.** OSHA has referenced NFPA standards that consider whether the rate of combustion will lead to a flash fire or explosion. NFPA 652 and 654 state testing is necessary and specify the design and energy levels of the igniters to be used. OSHA's proposed definition for combustible dust, adopted from ISO/IEC 80079-20-2 as referenced in the UN's GHS Revision 7, includes "liable to catch fire or explode on ignition." This lacks clarity, suggests that ignition energy levels are irrelevant, and suggests that a material would be considered a combustible dust even if it would take an arc flash to achieve ignition and an explosion. OSHA also did not*

propose to incorporate recognized testing standards. While the proposed definition would be more harmonized, the benefit seems limited; “combustible dust” is not a recognized hazard class under GHS and is only recognized under Canada’s system when the chemical is a combustible dust as shipped. We ask that OSHA adopt the NFPA definition. We also ask that OSHA explain the relationship between “combustible dusts” and “flammable solids” and ensure consistency in their definitions.

We also request revision of the proposed definition of “liquid” and clarification of the proposed requirement for particulate characteristics, absent an HCS requirement for testing. OSHA’s proposed new definition for “liquid” includes the phrase “shall be subjected,” which appears to require a manufacturer to apply either of two referenced test methods. This conflicts with (d)(2), in that “There is no requirement to test the chemical to determine how to classify its hazards.” We ask that OSHA revise its language to clarify its intent without this conflict.

*For small container labeling, we respectfully request adoption of exemptions based solely on the size of the container. **OSHA has allowed reduced labeling requirements for containers less than or equal to 100 ml, and less than or equal to 3 ml, and we appreciate the proposal to include those exemptions in the HCS.** However, they are conditioned on the manufacturer or importer proving that a complete shipped container label is infeasible, and for the 3 ml exemption, that it would interfere with use of the product for all downstream users. Given OSHA’s experience, **we urge OSHA to adopt these exemptions without product-by-product and container-by-container validation,** instead of based only on container size.*

*Expanding on that, some containers in an intermediate package may not hold hazardous chemicals. Paragraph (f)(9) permits label changes including use of an in-plant system. We ask that OSHA’s proposal be revised to provide this **flexibility to shift to an in-plant label and a different container.** We also ask that OSHA clarify its proposal to revise the current labeling requirements at (f)(11) so that the manufacturer would not have to relabel containers if they were “released for shipment” before the end of the six-month updating period. We **strongly support this provision, given the realities of global markets, but believe it should include make clear when the “released for shipment” criterion would be satisfied.** Our written comments offer a suggested addition. Manufacturers must also label at the time of manufacture and packaging, usually before knowing where the product will be shipped. We ask that OSHA’s final language **account for labels designed to meet the requirements of multiple jurisdictions** with different requirements. For exports, we ask that the substance of a November 23, 2015, letter of interpretation be incorporated into the HCS, to **allow certain labeling schemes** for containers sealed and shipped directly overseas with no anticipated exposures to downstream workers.*

*Next, **we respectfully request further protection of trade secret information.** The proposed revision of (i)(1) can be modified to make clear that – as we believe was intended – a*

manufacturer need not disclose the identity of confidential ingredients, and/or their concentration, on an SDS. The current proposal could imply that may need to be included in places other than Section 3, and that a confidentiality claim is allowed for the ingredient's identity or concentration but not both. Also, while OSHA's proposal would align with Canada's approach, we proposed a revision to address batch variability in two situations: where the variability might cause the classification to change from one category to another, and if the actual concentration range straddles two prescribed ranges. Lastly, if the definition of "physician or other licensed health care professional" is added and (i)(2) and (i)(3) are revised as proposed, we would appreciate OSHA guidance on what reasonable measures an employer may take, prior to disclosing a trade secret, to verify it would be disclosed to an appropriate individual when a medical emergency exists.

Lastly, we believe the proposed compliance deadlines are inadequate. Even if the proposed change to (d)(1) is dropped or narrowed in scope, adoption of other provisions in the NPRM would change the criteria for some existing hazard classifications, add new ones, and change the required precautionary statements, triggering implementation issues as noted elsewhere.

In closing, we maintain that OSHA can accomplish its objectives without lowering the overall protections of the HCS and without creating uncertainty or unintended consequences. We look forward to working with OSHA to achieve this and thank you for the opportunity to participate.

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About Plastics Industry Association

The Plastics Industry Association (PLASTICS) is the only organization that supports the entire plastics supply chain, representing nearly one million workers in the \$395 billion U.S. industry. Since 1937, PLASTICS has been working to make its members and the industry more globally competitive while advancing recycling and sustainability. To learn more about PLASTICS' education initiatives, industry-leading insights and events, networking opportunities and policy advocacy and the largest plastics trade show in the Americas, [NPE: The Plastics Show](#), visit plasticsindustry.org. Connect with PLASTICS on [Twitter](#), [Facebook](#), [LinkedIn](#) and [Instagram](#).