

Oral Testimony
Jennifer C. Gibson
on behalf of
National Association of Chemical Distributors
before the
U.S. Occupational Safety and Health Administration
Hazard Communication Standard Informal Public Hearing
on September 21, 2021
Docket No. OSHA-2019-0001

Good Afternoon.

Thank you for the opportunity to testify today on OSHA's proposed changes to the Hazard Communication Standard. My name is Jennifer Gibson, and I am here on behalf of the National Association of Chemical Distributors. NACD is an international association of more than 400 chemical distributors and their supply-chain partners.

Revisions to the Hazard Communication Standard have a huge impact on NACD members. Chemical distributors serve a critical role in the middle of the supply chain, and most of these companies have large numbers of suppliers, products, and customers. Changing safety data sheets (SDSs) and labels for thousands of chemical products is a major undertaking. Please note that most chemical distributors DO NOT meet the extremely limited definition of "distributor" under the Standard, which states that any entity that *imports, processes, formulates, blends, extracts, generates, emits, or repackages* is considered to be a *manufacturer*. Most NACD members perform these functions.

Today, I will focus on a few issues of most concern to NACD.

The first issue is the proposed definition of "bulk shipment." OSHA proposes to define "bulk shipment" as "any hazardous chemical transported where the mode of transportation comprises the immediate container. NACD is concerned that this

proposed definition conflicts with the definition of “bulk packaging” in the U.S. Department of Transportation’s (DOT) Hazardous Materials Regulations (HMR)¹, which also includes large intermediate bulk containers. This will cause significant commercial confusion. Rather than adopting the proposed “bulk shipment” definition, NACD urges OSHA to incorporate by reference the definition of “bulk packaging” as detailed in the DOT Hazardous Materials Regulations. This approach would provide clarity for the shipments in which there is crossover between the OSHA Standard and the DOT Regulations. It would also provide uniformity in worker training. Finally, this approach would reduce the need for future revisions. Should the DOT definition change, the OSHA definition would simply refer to the latest DOT text.

Next, NACD is concerned with OSHA’s proposal to define “released for shipment” as “a chemical that has been packaged and labeled in the manner in which it will be distributed or sold.” This definition creates uncertainty and raises questions. NACD recommends that OSHA drop this “released for shipment” definition.

Further and related, NACD is concerned about OSHA’s proposed updates to paragraph (f)(11). Under this change, chemicals that have been released for shipment and are awaiting future distribution would not need to be relabeled; however, the chemical manufacturer or importer would need to provide the updated label for each individual container with each shipment. OSHA also proposes to add “Date chemical is released for shipment” as a label element. OSHA says that the purpose of this proposal is to account for the long distribution cycles of some products and to reduce worker hazards caused by relabeling.

While at the surface these changes seem helpful, they are logistically complex and unfeasible.

NACD strongly urges OSHA to remove the term “release for shipment” from (f)(11) and to drop “date chemical is released for shipment” as a label element. This term is

¹ 49 CFR 171.8 (“bulk packaging”).

confusing and could be interpreted as requiring manufacturers, importers, and distributors to create new labels with new dates for every different product shipment date. This would be unworkable and serves no purpose. Another complication is that it is common for orders to be changed, delayed, or cancelled. Adding “date chemical is released for shipment” is also unnecessary as most containers include product manufacturing dates and/or certificates of analysis with the manufacture date.

Another question is why a chemical manufacturer, importer, or distributor would need to provide an updated label for every individual container even though OSHA’s stated intention is that the products would not need to be relabeled. It would be prohibitively expensive to send printed labels with each shipment and not feasible to track manually which shipments need labels and which do not. Extensive new programming and software would need to be developed to handle this.

Sending new labels separately for every individual container also raises worker safety concerns. Most customers of chemical distributors do not want to be in the relabeling business, nor should they be. If these customers receive new labels for each container, they may assume they are required to attach them, which increases the chance for worker injury.

In addition, if a customer opts to apply the labels, there is no guarantee they will apply the labels to the correct containers. This could subject all parties in the supply chain to liability if products are relabeled incorrectly.

NACD recommended a few simple amendments to the proposed (f)(11) updates in our written comments, which would eliminate needless confusion, enhance safety, and facilitate OSHA’s stated intention of not requiring packages to be relabeled.

Next, under **Appendix D – Safety Data Sheets, Section 2**, OSHA proposes to include “any hazards associated with a change in the chemical’s physical form under normal conditions of use” and identification of hazards that “result from a chemical reaction.”

This is a massive change, which would create an impossible situation for chemical manufacturers and distributors. NACD members generally sell to widely differing markets and are too far up the supply chain to always know the ultimate uses for their products. There is no way to ascertain the thousands of ways that could be considered “normal conditions of use.” Determining downstream hazards is outside the scope of the responsibilities for a distributor or producer under the Standard, which currently and appropriately rests with the **workplace**, and the **employer**. It is impractical for a distributor to know all possible uses and hazards or potential reactions associated with downstream customers. Manufacturers and distributors should be responsible for communicating the hazards of the material only in the form sold.

Any chemical that can be mixed with a wide range of other chemicals could have an extensive list of hazards that “result from a chemical reaction.” The intent of the proposal seems directed at products meant to undergo a specific reaction as part of their use, and not general use chemicals. This only makes classification more confusing. These are already identified in sections 5, 9, and 10 of the SDS. Anything beyond that is unrealistic.

Because of liability concerns with attempting to determine all downstream uses and chemical reactivity hazards, this change will result in several pages of legalese. This will make the SDS far too long and complicated and will certainly not enhance worker safety.

NACD strongly urges OSHA to withdraw this proposed change to the SDS. It is a major scope expansion, which would add needless complexity and liability to the supply chain. Finally, the proposal is not even part of the GHS so will not advance the objective of aligning with more recent versions.

Next, NACD urges OSHA to adopt a much longer implementation period than proposed. The proposed changes to the Standard will require many companies to create new labels and SDSs for all their products, making the implementation effort as extensive as

it was for the 2012 updates. Given the enormity of this effort, particularly for chemical distributors who can have dozens of suppliers and thousands of products, the proposed compliance deadline of one year after the effective date for substances and two years for mixtures is impossible.

For example, the revisions proposed in Appendix C – Allocation of Label Elements impact not only labeling, but also SDS generation because the SDS data is used to develop labels. NACD members' software vendors estimate that the programming changes to comply with the changes could take many months. The more extensive the changes, the longer it will take.

A more realistic implementation timeline would be 18 months for substances and three years for mixtures. Most importantly, NACD requests that OSHA adopt a staggered implementation timeline, based on role in the supply chain. Under this system, the *original* chemical producer would have 18 months to comply, and the *next segment of the supply chain*, typically chemical distributors, would have an additional year. Simply giving “distributors” additional time would not suffice because the definition of “distributor” under the Standard is so limited.

Chemical distributors rely on their suppliers to provide updated SDSs so they can then produce their own SDSs and labels. During the 2012 implementation, many NACD members were caught in a bind because their suppliers did not provide the SDSs until close to the deadline, giving these companies little or no time to create their own SDSs and labels. NACD and others shared this dilemma with OSHA, and the agency ultimately issued enforcement discretion² allowing extra time for importers and manufacturers who had not received needed classification information from their upstream suppliers, provided they had made good faith efforts to obtain the information. A similar situation will certainly occur with the current revisions unless OSHA adopts a staggered approach based on position in the supply chain.

² Interim Enforcement Guidance for Hazard Communication 2012 (HCS 2012) June 1, 2015 Effective Date, May 29, 2015

Finally, NACD raises the concern that OSHA's implementation cost estimates are severely underestimated. One NACD member estimates they will need to review 10,000 SDSs and update 4,000 more to comply with the revised standard. Even at OSHA's .7 hours per SDS, that is **16 months** of dedicated work.

OSHA's estimates are only somewhat realistic if a company has in-house SDS authoring software and has maintained formulas and data used in classification. If updated formulas or other data need to be obtained from toll blenders, suppliers of private label products, or outside testers, these documents will take significantly longer to update.

Many companies do not have the staff resources to produce their own SDSs in house, even with software, and must contract with outside authoring companies. These companies typically charge between \$400 and \$800 to produce an SDS and label for one product. If a company has 150 SDSs to update, which is conservative for many chemical distributors, the cost would be \$60,000 to \$120,000. This does not even include the time needed on other essential tasks, including working with the vendor on changes, conducting internal review, managing the documentation, and supply chain communication.

NACD appreciates the opportunity to provide input on OSHA's proposed revisions to the Hazard Communication Standard. These changes will have a substantial impact on chemical distributors, and NACD encourages OSHA to consider seriously the issues and concerns raised in our testimony and written comments. I would be pleased to answer any questions.