August 12, 2014

Dr. David Michaels
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Petition To Reopen Rulemaking On The Hazard Communication Standard, 29 CFR §1910.1200, To Extend Time For Implementation

Dear Dr. Michaels:

In response to our discussion with you on May 14, 2014 and your invitation to follow up, we are writing to petition the U.S. Occupational Safety and Health Administration (OSHA) to take appropriate administrative action for temporary relief from certain implementation deadlines in the Hazard Communication Standard (HCS). 29 CFR §1910.1200(j) requires that chemical "manufacturers, importers, distributors, and employers shall be in compliance with all modified provisions of this section no later than June 1, 2015" (Petition).

As noted herein, compliance with this deadline for manufacturers of formulated products is impossible due to the fact that many manufacturers of individual chemical substances used as raw materials have reported that they plan to provide Safety Data Sheets (SDSs) meeting the new standard by the June 1, 2015 deadline, but not significantly before the deadline. Accordingly, manufacturers who are members of the trade associations seeking this relief cannot create accurate hazard classifications and produce labels and SDSs for their formulated products that are compliant with the new HCS classification scheme in time to meet the June 1, 2015 deadline. Petitioners are concerned about the accuracy of hazard communication materials and worker safety. This request is, fundamentally, a request for the agency to give well-intentioned formulators the opportunity to revise SDSs and labels properly rather than quickly to serve the goals of hazard communication.

Of particular importance, Petitioners seek temporary relief from the following provisions:

1. §1900.1200(f) Labels and other forms of warning
2. §1900.1200(g) Safety Data Sheets
3. §1900.1200(j)(2)(i) the distributor shall not ship containers labeled by the chemical manufacturer or importer unless the label has been modified to comply with paragraph (f)(1).

Specifically, this Petition is a request to modify the existing implementation deadline as follows:

We agree that the existing deadline of June 1, 2015 can remain in effect for the manufacturers, importers, or distributors of products that are sold as individual chemical substances used as raw materials in the manufacture of formulated products such as, but not limited to, paints, coatings,

adhesives, sealants, cleaning agents, pesticides, fertilizers, and a wide variety of similar formulated products. These could be defined as chemical products that contain no components requiring their own SDSs. We propose that manufacturers, importers, or distributors of formulated products (formulators), would have to be in compliance with all modified provisions of 29 CFR §1910.1200 no later than June 1, 2017, and to extend the compliance dates provided in §§1910.1200(j)(2)(i) & (ii).

OSHA can address these concerns by one of three approaches:

1) Amending the standard,
2) Granting a temporary variance, or
3) Establishing a *de minimis* enforcement policy for SDS and labels that conform to certain generally accepted standards.

The undersigned organizations (see Section I below) hereby formally petition OSHA to adopt one or more of these options to provide the necessary relief to formulators.

This petition is submitted in an effort to maintain the safety of workers using hazardous chemical products and to allow regulated entities to comply with the rule. We note that it is currently possible to develop new versions of SDSs and labels based on the minimal amount of information currently available, but stress to OSHA that those SDSs and labels developed without receiving classification information for the raw materials will likely not be accurate or provide the level of safety achieved under the current standard. Petitioners are asking the agency to provide adequate time to classify formulated products, after receiving the needed information, to develop accurate SDSs and labels.

We provide language for the proposed changes to the standard and explain in detail the reasons for our request below, and seek a meeting at your earliest possible convenience to discuss how the regulated community can help OSHA address this problem. Given manufacturing logistics and planning and because the remaining time before the existing deadline is already unworkable. We request that the Agency provide a reply within the next thirty days as to its intentions.

I. Who We Are

The following organizations hereby submit this request on behalf of their Members (hereafter Petitioners):

Adhesive and Sealants Council
American Coatings Association
American Composites Manufacturers Association
CropLife America
ISSA, The Worldwide Cleaning Industry Association
National Association of Chemical Distributors
National Association of Manufacturers
RISE (Responsible Industry for a Sound Environment)
Society of Chemical Manufacturers and Affiliates

II. Why The Signatories Are Seeking Relief

A. The Challenges Posed Under The Current Rule

In 2012, OSHA published the final rule for HCS, with general support from the chemical industry. In doing so, OSHA implemented requirements for revised SDSs and labels to bring them into greater conformity with the United Nations' (U.N.) Globally Harmonized System for Classification and Labeling of Chemical Substances (GHS). In part, OSHA adopted this change to follow the lead of the European Union and other major U.S. trading partners to provide manufacturers with greater uniformity in labeling requirements for hazardous chemicals. This attempt at global harmonization has been applauded by the chemical industry, as it provides the ability for products to simply flow between countries within the global marketplace.

One striking difference remained, however between the European Commission's (EC) and OSHA's adoption of GHS principles. The EC imposed a relatively short transition period for substances, but a much longer transition period for mixtures, or preparations[1]. The EC reasoned that "… the classification of mixtures builds on the classification of substances and *can only* be carried out when the classification of its ingredients are available." *See* European Commission Enterprise and Industry Directorate-General, Chemicals and Construction REACH, Note to the File. GHS Implementation: On the optimal length of the transition period. (Jul. 20, 2006), ENTR/G1/PA/OL D (2006). Accordingly, the EC staggered the deadline for substances and the deadline for preparations by over four years (hereafter, staggered deadlines, phase in or phase-in period). See Directives 67/548/EEC, 1999/45/EC.

By contrast, OSHA has elected to implement a single deadline for the implementation of GHS-compliant SDSs, to wit, June 1, 2015 without regard to whether the chemical was an ingredient or a formulation (hereafter single deadline). OSHA justified this decision partially on the basis that it expected the EU's classification process to be well along and for the classifications for substances in commerce to be made available in a database on which U.S. manufacturers could rely in significant part for the correct classification.

Many formulators will not have received updated SDSs for all their raw materials from their suppliers in time to complete updates to their labels and SDSs by the current compliance deadline. Deadlines are already nearly passed for orders to be placed for printing labels that will be used on products beginning in January to meet the December 2015 deadline that applies to

[1] The EU's approach to implementing GHS classification for hazardous chemicals followed the EU practice of treating substances and mixtures differently. Under the regime in Europe before the adoption of Registration, Evaluation, Authorisation and Restriction of Chemical substances (EC 1907/2006) (REACH) and the Classification, Labelling and Packaging (CLP) Regulation (EC) No 1272/2008, "Dangerous Substances" and "Dangerous Preparations" were regulated separately. The implementation of the revised CLP Regulation implementing GHS classification was applied to Substances with a deadline of January 1, 2011, and had to be classified under both the old and new regimes, while the application of the GHS scheme to Preparations is voluntary until June 2015. Thus, in the EU, formulators had a 4.5-year transition period. OSHA provided no transition period for formulators in the US.

distributors. As described in more detail below, a six-month timeline for labels does not take into account how long many of the products covered by the standard remain in the channels of trade. In addition it does not account for the batch to batch manufacturing process used by many formulators, who may only produce specialty batches on a 1 to 2 year cycle.

For various reasons, this scenario has not played out as OSHA expected. Certainly, Petitioners' Members are now aware that the complexity and technical difficulty of classifying products under the new system is substantially greater than was initially believed. The process of classifying substances under the regime is not a simplistic, check-the-box exercise. This problem is compounded for a product that is comprised of multiple components that are themselves formulated products. Often this involves a supply chain that is three to five layers deep.

Manufacturers of raw materials must complete their own SDSs and provide them to formulators before the formulators can use that information to develop revised SDSs for their formulated products. For those formulated products that are used by a downstream formulator to manufacture a final formulated product (*e.g.*, paints, coatings, adhesives, sealants, cleaning agents, pesticides, fertilizers), the single deadline exacerbates that task.

If a formulator were to develop its SDS based upon extrapolation of publicly known generic data about a product component that is not specific to a particular supplier, then it runs the substantial risk that the SDS for the formulated product will be incomplete and inaccurate. Without updated, accurate SDSs from suppliers well before June 2015, formulators will not be able to comply with the deadline and will be forced to either to do repetitive, unnecessary and frequently incomplete assessments on their raw materials, or to provide incomplete and inaccurate safety information to downstream employers. Further, formulators will be required to repeatedly modify their SDSs if multiple suppliers' SDSs turn out to be different than the publicly available data.

In addition to the substantial extra work (amounting to hundreds of thousands of hours across Petitioners' industries), formulators will be reluctant to take on the liability associated with classifying raw materials that they do not make and for which they may, even likely will, not have complete information.

In the preamble to the final rule OSHA acknowledged this reality by its statement that formulators should continue to rely on suppliers' HCS-compliant SDSs as "the chemical manufacturers and importers have access to information about the chemicals they sell that is not available to those who only use them." 77 Fed. Reg. 17707, Col. 1.

B. Compliance With The June 1, 2015 Deadline Is Not Possible Unless Concessions Are Made To Accuracy And Safety

Petitioners have discussed this problem exhaustively with member manufacturers over the past two years as the compliance deadline loomed. Petitioners are uniform in their position that compliance with the June 1, 2015 deadline is not possible under the circumstances. Raw material suppliers have not complied early, as OSHA expected. Without the necessary information flowing from the raw-material suppliers, formulators are forced to make assumptions that impact the accuracy of both SDSs and labels. This will decrease safety and

require multiple revisions to SDSs as information arrives from suppliers. Many raw-material manufacturers and formulators have purchased software to ease compliance, but have now realized that the software is not a full solution and that many SDSs and labels need to be manually edited to comply with the standard. OSHA implemented a limited sell-through period which exacerbates the issue. To avoid relabeling products, manufacturers are required to change labels well before June 1, 2015 to ensure the products clear the distribution system before December 1, 2015. Finally, OSHA stated in the final rule that formulators would not need additional time to comply, which clearly ignores the realities of manufacturing and distributing formulated products.

1. OSHA Should Have Required Suppliers To Comply With The Standard Ahead of a Compliance Deadline for Formulators, Rather Than Relying On Formulators To Enforce Early Compliance by Suppliers.

The petitioners argue that it is OSHA's responsibility to develop and enforce feasible compliance deadlines for the HCS. When OSHA issued a final rule requiring one compliance date for chemical substances and formulated products, the Agency placed a burden on formulators that OSHA was unwilling to accept itself. Requiring formulators to seek the necessary classifications from their suppliers in advance of the compliance deadline was a drastic mistake of which OSHA was made aware during the rulemaking process.

As suppliers are working to classify their chemical substances, the differences between OSHA's HCS and European Chemicals Agency's (ECHA) Classification, Labeling and Packaging (CLP) regulations have become more apparent. Many suppliers to the formulator industries are required to classify products differently between the two jurisdictions. OSHA based its compliance time line on the expectation that these suppliers would simply be able to use a classification from the EU, which has left suppliers struggling to provide HCS-compliant SDSs to their downstream users.

Petitioners surveyed their members by using the attached questionnaire (see Appendix B). The following statements are taken from the individual responses to that survey. Members continue to provide additional data, which petitioners will summarize and provide to OSHA on request.

One formulator stated that, in the absence of early compliance from suppliers, it has had no choice but to complete a "best probable classification from public knowledge." All of the manufacturers that we have conferred with have stated that they have not received a large majority, let alone all, of the SDSs that they need from their suppliers. Nearly all of the manufacturers responding have received less than 10 percent of the SDSs for their raw materials. One manufacturer stated that it has requested that its raw material suppliers provide it with GHS classifications. However, it has only received needed data from *five percent* of the 4,000 suppliers it contacted.

As OSHA suggested, many formulators have spoken with their suppliers about this problem, and the suppliers have responded that they do not plan to supply new SDSs that comply with the standard before the June 1, 2015, deadline. Therefore, OSHA's assumption about the

marketplace resolving these issues was not only overly optimistic, but missed the mark entirely. In fact, the agency itself was unwilling to require early compliance from suppliers, but it now expects formulators to achieve what OSHA would not.

When surveyed, members of the American Coatings Association (ACA) estimated that only 10-30 percent of their suppliers would provide them with the component SDSs necessary to complete their own SDSs *prior* to June 1. One member stated that, to date, it had only received six percent of the compliant SDSs it needs from raw materials manufacturers; another stated that it had only received five percent.

Members of the National Association of Chemical Distributors (NACD), who distribute many intermediate mixtures, estimate that they will only receive between 60 percent and 80 percent of HCS compliant SDSs prior to June 1, 2015. Many of their SDSs will not be ready to be delivered to their customers, as formulators do not have enough time to properly classify their products after receiving the necessary substance SDSs. This will have a cascading effect for downstream manufacturers.

2. Formulators Will Be Forced To Prepare A Makeshift And Inaccurate SDS and Label For The Purpose Of Meeting The June 1, 2015 Deadline, And Then Will Have To Redo The SDS Several Times As Suppliers Provide Updated, More Accurate Information.

The consequence of OSHA's firm adherence to a single deadline is that formulators will comply with that deadline but will inevitably produce inaccurate classifications, due to lack of HCS compliant SDSs from their suppliers. Given the lack of information from suppliers, some formulators will have to speculate and extrapolate from generic data and without regard to the specific product coming from a specific supplier.

While it may be possible to produce a version of a SDS and label, it is not possible to verify its accuracy. Formulators will not know which classifications of raw materials are accurate until they receive compliant SDSs from suppliers. Moreover, relying on the notion that formulators can simply note that the data are incomplete means that the downstream flow of information will be confusing and inaccurate for some time to come. This is contrary to the intent of the standard. In the preamble to the final rule, OSHA ensures "… chemical manufacturers and importers … that, in most cases, they can continue to rely on their suppliers' SDS information for ingredients they will be using in their formulations." 77 Fed. Reg. 17708, Col. 3.

The effect will be that, for a significant amount of time, formulators will be forced into a continuous cycle of revising and re-revising potentially misleading or inaccurate data, and affected workers will either grow increasingly reliant upon, or increasingly dubious of, each revision, with a deteriorating impact upon safety and health. This will inevitably lead to confusion on the part of the very employees who are the intended beneficiaries of the standard and increased costs to their employers who will need to revise training programs and materials more frequently for the first few years as the SDS and labels of the affected products are revised and distributed

3. The Existence Of Software Does Not Make Compliance Easier, Nor Does It Make It Possible To Comply With The Single Deadline.

In its preamble to the final rule, OSHA stated that the compliance process should be easier in 2012 than it was in 1994, since there are now software programs that can assist with the process. OSHA may misunderstand the value that present software products provide.

Every manufacturer that we consulted on this issue stated that the software does not fully automate the process. One manufacturer stated that it has "yet to produce a SDS in [the software program] that came out correct and [we] did not have to manually edit."

Another manufacturer stated that it generates, on average, 62 SDSs per day and is "still working to accomplish automatic SDS generation." One manufacturer stated that its colleagues in the EU who have been using the same software for years "have continuous problems with proper classification." This last point presents a particular irony, given that OSHA stated in its preamble that it will not implement a phased-in deadline for formulators because of the data that U.S. manufacturers can rely upon from manufacturers in the EU.

Another manufacturer pointed out that it is difficult to switch over to a new SDS software system given that it is finding a "dearth of data."

Finally, manufacturers have informed us that software programs do not address how chemicals react to each other in a mixture; thus, while software is one tool for manufacturers, it hardly results in reducing the process to mere data entry, on which OSHA's conclusions with regard to the deadlines rest.

4. The Timeline For Shipping Is Inadequate Because It Ignores The Sell-Through Time, Inventory Duration, And Cycles For Batch Manufacturing That Really Occur in Chemical Manufacturing.

When issuing the final rule, OSHA ignored the complex distribution systems used by the chemical industry, resulting in an unrealistic single deadline for compliance. After a product is manufactured, it often sits at various points in the distribution chain prior to shipment to the end user.

On average formulators ship their products to thousands of distributors' locations, and these distributors keep a stock of as many as 500 units per shop keeping unit (SKU). These distributors often ship the product through additional distributors prior to the product ending at a retail point of sale or being sold directly to an end user.

Many manufacturers work in a 'batch to batch' manufacturing system and have the ability to serve a limited market with a specialty product. For example, automotive refinish coatings are often manufactured to specific criteria and therefore are only produced once every two years. Due to the increased shelf life, these products are already in the distribution chain and labeled according to HCS 1994.

The shelf life of formulated products ranges between six months and two years, and sometimes longer. Due to OSHA's limited sell-through period, a complex supply chain and increased shelf life, without an increased or unlimited sell-through period it is likely that a large quantity of out-of-compliance formulated products will be in the distribution chain after December 1, 2015 and will need to be re-labeled. Additionally, relabeling product potentially introduces a multitude of issues, such as, but not limited to errors in hazard communication and misinterpretations of changes in hazard communication by employees.

After considering a product's time spent in the supply chain and OSHA's limited six month sell-through, one formulator estimated that products need to start being labeled with GHS compliant information as early as January 1, 2015. Most of its product would then clear the supply chain prior to December 1, 2015.

Further, developing labels is not as simple as OSHA seemingly expects. After receiving all of information on properly classification of the raw materials for a formulated product, it takes six months to update each label. Each label must meet certain design specifications, include the proper marketing information and use instructions, as well as other legally required information, such as net weight, Volatile Organic Compound (VOC) levels and state-mandated right-to-know language. Each step in this process affects the other steps and must work in unison to develop a complete label.

The changes required by the new HCS provisions will take up more "real estate" on the label, requiring reformatting and changes to other components of the label, including vitally important use directions. The requirement for the red border for pictograms adds to the problem. OSHA seemingly does not understand the fundamental changes that the revised HCS requires. HCS complaint labels require a complete restructuring of a product label.

Companies typically use a 3rd party vendor to pre-print their labels; after the label is designed and reviewed it can take up to two months to print the labels for a product. The complete time to develop and have a label printed takes at least eight months. Additionally, there has been concern that, with the large number of chemical companies changing labels during the next 10 months, label print times could increase significantly because of capacity limitations at printing companies.

Combining the typical time to develop a new product label (eight months), the time a packaged product sits before shipment, and a product's time to clear the supply chain from labeling to final sale (11 months), formulators would have needed HCS-compliant SDSs for all of their raw materials by May of 2014 in order to comply with the June 2015 deadline.

Chemical distributors are also struggling to comply with the limited sell-through period. Members of one particular petitioner, NACD, have stated they can hold stock for up to twenty years. These products are currently in the distribution system and will need to be relabeled or destroyed after June 1, 2015. Members of RISE (Responsible Industry for a Sound Environment), a trade association representing specialty pesticides and fertilizers, stated that their products have a shelf life between three to ten years. OSHA clearly did not consider the full shelf life of formulated products when developing the HCS compliance timeline.

5. OSHA's Assertion That "Little Time Should Be Necessary" For Formulators To Comply Reflects A Misunderstanding Of The Process.

In the preamble, OSHA stated that, because there is "extensive information available, … little time should be necessary to complete this part of the work." 77 FR 17573, at 17740 at Col. 1. This reflects an incomplete understanding of the chemical manufacturing industry, its scale, the availability of data, and the process of revising SDSs and labels.

Formulators have a large range of products that need updated SDSs and labels. A smaller company typically manufacturers up to 1,000 formulated products, while a larger company typically may manufacture approximately 25,000 formulated products. However, many of these formulated products are distributed or sold in multiple containers of differing shapes and sizes. Due to the multitude of different packaging containers, the changes to HCS can result in 35,000 to 1,000,000 SKUs all needing discreet labels.

Based upon communication between formulators and manufacturers of raw materials, it is currently estimated that between 10 percent and 30 percent of suppliers plan to ship HCS compliant SDSs prior to June 1, 2015. Currently, as noted above, roughly five to 10 percent of raw materials used by the paint and coatings industry have HCS compliant SDSs.

To avoid returning product containers that are still in the distribution system after December 1, 2015 to be relabeled, companies have considered providing revised labels to distributors to manually apply them in warehouses and commercial outlets. Hand-applied labels create their own complications for several reasons. First, these labels would often be applied outside of the manufacturer's direct control; therefore it would be difficult for a manufacture to maintain the necessary oversight to ensure the label is applied correctly. This opens manufacturers up to potential liability if downstream distributors, who are unaffiliated with the manufacturer, are tasked with re-labeling products. Second, shipping cartons would have to be opened, the inner container removed, relabeled, and returned to the shipping carton, which would then have to be resealed. These shipping cartons have to meet U.S. Department of Transportation (DOT) shipping requirements. Third, some form of quality control would have to be created to assure that the correct label is applied to the product. This would require unprecedented coordination between formulators, distributors and retailers. And finally, in many cases, the large amount of space required for the HCS warnings would often require that the entire label be replaced. We do not believe OSHA's economic impact analysis took these costs fully into account.

Additionally, the longer it takes to obtain new SDSs for product components, the more products there will be in the distribution chain that will need new labels under the current implementation schedule. This could create a huge volume of products that would need to be re-labeled by hand to comply with HCS due to the limited sell-through period, to avoid returning the product to the manufacturer.

One formulator stated, "There are already products in the supply chain which will have to be relabeled, while in some cases, this is not even feasible, even if hand-applied labels were considered; mainly due to the volume."

Returning product to the manufacturer has its own costs in transportation and handling that are not insignificant and could result in further exposure of personnel to potentially hazardous products. Given current typical profit margins for manufacturing companies of five to 10 percent, these additional costs could easily make the profit on those existing products negative.

C. This Problem Was Highlighted In Many Comments During the Rulemaking Process But OSHA Rejected Stakeholder Pleas To Fix This Problem In The Final Rule

Numerous affected industries alerted OSHA to the problems created by a single deadline, but the agency declined to address these concerns or provide an adequate justification for its decision to keep a single deadline. OSHA acknowledged comments recommending a phased-in approach but chose to reject them; instead, OSHA elected to take no action to address the serious supply chain issues it had recognized, and created an impossible compliance situation.

1. Numerous Stakeholders Highlighted Serious Concerns With The Single Compliance Deadline During the Rulemaking Process.

Several commenters on the proposed rule alerted OSHA to this problem during the HCS rulemaking process. Product Safety Solutions noted that "… formulators who relied upon…suppliers for their hazard determinations had very little time to 'turn around' their own hazard communication documents by the implementation deadline. For this reason, manufacturers of commodity chemicals should be encouraged to come into compliance at least a full year before the mandatory compliance date." See Comments in HCS Rulemaking at Document ID No. 0021. Several trade associations and employers commented specifically on this problem during the rule making process.

ISSA, the Worldwide Cleaning Industry Association, at Comment in HCS Rulemaking at Document ID No. 0032, recommended "… that OSHA first require raw material suppliers to implement the GHS required changes … within the first 2 years … Formulators could then be required to implement their changes over years 3, 4 and 5 …" *Id.* at p. 10.

E.I. duPont de Nemours and Company (DuPont) also clearly laid out the problem, Comment at Document ID No. 0038, stating that "Reclassifying pure chemicals needs to occur before manufacturers can classify mixtures made from those chemicals." Accordingly, DuPont recommended "… a phase in period of two to three years to classify pure chemicals and an additional year to classify formulated products…"

The Industrial Minerals Association, Comment at Document ID No. 0111 at p. 3, stated: "Thought should be given to staged implementation for hazard assessments of mixtures."

The American Chemistry Council (ACC), Comment at Docket ID No. 0163 at p. 2, commented that "a longer transition period may be required for certain substances (e.g., mixtures)." ACC also stated at the hearing: "A period of at least an additional 24 months after the compliance deadline for chemical manufacturers will be needed for formulators of end use products to obtain the GHS classification and other information about the component materials that they purchase from their upstream suppliers in order to classify their formulated products."

The American Coatings Association (ACA) also commented regarding the need for a phased approach: "…recognizing the dependence of manufacturers of complex mixtures (paints and coatings) on their suppliers of pure and intermediate chemicals, our industry recommends a Phased Implementation scheme for the GHS over a period of 4 - 6 years…" "Once the pure and intermediate chemicals are completed then the manufacturers of complex mixtures can use the SDS information to classify their products in accordance with the GHS process." Docket ID 0062 at p. 17.

2. OSHA Acknowledged And Ignored Comments Seeking A Phased-In Deadline.

OSHA acknowledged receipt of these warnings about a single implementation date. In its preamble to the final rule, OSHA admitted that commenters suggested that OSHA should "phase in substances first, and then cover mixtures, or to have a three-step phase-in that includes intermediates before mixtures." 77 Fed. Reg. 17738, Col. 2.

OSHA further acknowledged that commenters believed the phase in should be "tiered, with substances first, and then mixtures, or a three-tiered system with substances, intermediate mixtures, and complex mixtures." 77 Fed. Reg. 17739, Col. 1. OSHA acknowledged that "the latter approach has been used by the EU." *Id.*

3. OSHA Acknowledged That A Phased-In Deadline Has Logic, But Elected Instead To Respond To A Supply Chain It Described As Disorderly and Illogical.

OSHA chose to ignore these warnings, stating that, although that approach "has some persuasive logic…the supply chain is not always orderly and logical." 77 Fed. Reg. 17739, Col. 2. We find OSHA's description of the marketplace supports the opposite conclusion that a phased approach was absolutely essential. OSHA failed to properly exercise its rulemaking authority in intentionally adopting what it called a "disorderly and illogical" approach rather than listening to people knowledgeable about the marketplace and appropriately taking into account their concerns about the timing of implementation. OSHA recognized that serious supply chain problems would occur, even with a two-tiered approach, yet chose to ignore this problem and do nothing.

4. OSHA Mistakenly Understood Commenters As Asserting That No Formulated Product SDSs Can Be Completed Until All Substances' SDSs Are Completed.

OSHA declined to assume that "*no* mixtures can be completed until *all* substances are done." *Id.* In fact, no one made the sweeping assertion that SDSs for *all* substances must be done before *any* SDSs for mixtures or formulated products could be done. The problem with the current single deadline rule is in fact the opposite: presently *no* formulators will be able to prepare an accurate and reliable SDS. Instead, it would clearly be safer to wait for accurate information from the manufacturers of ingredient materials.

OSHA discussed the circumstance of a chemical manufacturer of a raw material waiting until June 1, 2015 to provide a HCS compliant SDS to the formulator of a final product. Although it is possible that this situation could still occur even with the relief being sought, the petitioners believe that simply reducing the number of suppliers that need to be pressured for SDSs compliant with the HCS will make the process easier. The Petitioners assert that no formulator is planning to stop compliance efforts if OSHA provides additional time to comply. This is not an attempt to further delay compliance with HCS; the petitioners insist that time is simply needed to comply, ***after*** receiving updated SDSs.

5. In 2012 The Agency Justified A Single Deadline Making The Same Mistake in Requiring "Target Organ Effects" Labeling.

The agency further observed that, with the implementation of the initial HCS in the 1990s, most employers were able to meet a two-year phase in. However, OSHA admitted that, following the 1994 rulemaking and in prior interpretations inferring the HCS required "target organ effects" labeling, exceptions were made through enforcement policies. *Id.* at Col. 3. It is important to note *that* industry reaction to the single deadline approach in prior rulemakings was limited because the change in practice being sought was largely in the workplace and not with the required hazard communication information (i.e. labels and MSDS).

This admission that enforcement exceptions were necessitated by OSHA's single deadline during previous changes to the HCS appears not to have informed the agency's judgment in once again imposing a single deadline with the revised standard, instead of learning from prior experiences. OSHA has compounded the problem by making the same mistake yet adopting a far more complex system of labeling.

It is incumbent on government agencies, including OSHA, to provide certainty to regulated entities and resolve outstanding issues *before* a final rule is issued and disaster strikes, instead of relying on a future enforcement policy to resolve the issue or blithely dismissing them with, "These types of issues are generally addressed by the market …" 77 Fed. Reg.at 17739, Col. 2. At the very least, the petitioners have now demonstrated the need for the very enforcement policies, or temporary variances to the implementation that OSHA anticipated. Without providing formal, written relief, OSHA is choosing to watch well-intentioned companies – those

struggling to comply with the letter and intent of the HCS – as it decides whether to enforce the standard.

6. OSHA Unrealistically Expects That All U.S. Manufacturers Should Be Able To Rely On SDSs Developed Under Dissimilar Foreign GHS Systems - Even For Chemicals That Are Only Made In The U.S.

OSHA claims a phase in is unnecessary because suppliers in the EU and other countries have already had to complete substance evaluations. *Id* at p. 17740 at Col. 1. Thus, OSHA concluded "little time should be necessary to complete this part of the work." *Id.*

First, OSHA's assertion that little time should be necessary for formulated products disregards the large number of industry comments to the contrary. Commenters informed OSHA that formulated products will require several years to phase in compliance with the new requirements. OSHA has not supplied evidence of its own to contradict this assertion, and thus failed to apply the best evidence available.

Second, OSHA's assertion that a phased-in deadline for substances and formulations is unnecessary because substances already have SDSs in the EU and other countries shows a clear misunderstanding of the marketplace. Employers are not able to make assumptions about a particular product based upon a competitor's slightly different formulation without some risk of inaccuracy and thus may fail to convey accurate hazard information to affected workers. OSHA assumes too much when it premises its rulemaking on the flawed assumption that basic substances are completely identical when they are produced using different processes, with different feedstocks and by thousands of manufacturers in scores of countries around the globe.

One manufacturer informed us that about 2,000 chemicals that it manufactures are unique formulated products that have no analogous product found in the European chemical industry. Another manufacturer informed us that *almost every one* of its products will require a unique SDS or label due to varying classifications.

OSHA continues to operate on the flawed premise that commodities manufactured in the United States are also manufactured elsewhere. The agency concluded that it is therefore entitled to ignore the thousands of chemicals that are *only* manufactured in the United States, where the manufacturer will be unable to rely on work performed in the EU, Japan, or elsewhere.

Third, a supplier's existing SDSs or other existing SDSs for similar products are not simply plugged into the SDS for a formulated product. A supplier may ascribe a hazard classification to an ingredient that does not need to appear on a formulation's label or SDS based upon the concentration of the ingredient in the formulation. One formulator informed us that almost every one of its formulated products will require a unique SDS or label because of the relatively low concentration of ingredients.

Fourth, OSHA implemented hazard classification principles that are not identical to the GHS principles adopted in other countries, including the U.S.'s major trading partners in the EU and Japan. Therefore, OSHA knows full well that a hazard classification arrived at by a

manufacturer in the EU is *per se* unreliable in the United States. The basis for this statement is obvious. Given that a not insubstantial number of classifications in the EU are different than those required in the U.S. for the same chemical, chemical manufacturers will have to recheck the classifications of every substance and formulation under U.S. rules.

Fifth, and perhaps most importantly, OSHA's reliance on foreign GHS systems such as the EU's ironically ignores the most salient feature of these systems: *these other agencies themselves created a phased-in deadline for substances and formulated products.*

Notably, the EU system incorporates a "principle of mutual recognition" that states that a product which is lawfully marketed in one EU member state and not subject to EU harmonization "should be allowed to be marketed in any other EU member state even if the product does not fully comply with the technical rules of the destination country."[2] For OSHA to dismiss the need for a phased-in deadline on the premise that U.S. formulators can rely upon hazard assessments developed elsewhere such as in the EU, it should logically have adopted a principle of mutual recognition authorizing reliance upon otherwise unreliable foreign assessments of similar but not identical products. In contrast, OSHA has not explicitly authorized formulators to rely on classification by others who are not their suppliers.

D. OSHA Has Rebuffed Previous Industry Attempts to Resolve The Deadline Concerns After The Final Promulgation Of HCS Until Now

Numerous industry associations have raised concerns to OSHA with respect to the compliance dates in public forums, one-on-one meetings, and request letters but, to date, OSHA has been unwilling to provide any relief from the single compliance date. ACA, for example, has strived to work with OSHA and presented a workable solution that would alleviate the industry's concern while adequately protecting workers.

ACA met with OSHA staff on September 5, 2013 to discuss a number of compliance issues, including industry concerns with the single effective date. ACA asserted that in order to ensure proper compliance with the HCS regulations, chemical manufacturers needed more time. ACA member companies explained they had, at the time, only received HCS compliant SDSs for two percent or their raw materials. OSHA continued to insist that formulators should have been prepared for the transition based on activities in the European Union. OSHA stated that the agency expected formulators to either pressure suppliers for the data or use existing data to properly classify their formulated products. As a follow up to the meeting, ACA described the problem in a letter to OSHA dated September 27, 2013 (see appendix C), and outlined a proposal

[2] See for example, *Annex 3: The Economics of European Union Membership*, The Scottish National Government's summary of principles of the European Union. "The principle of mutual recognition is a key element for enabling the free movement of goods in the Single Market, and for strengthening trade flows between Member States. It means that a product lawfully marketed in one Member State and not subject to Union harmonisation should be allowed to be marketed in any other Member State, even when the product does not fully comply with the technical rules of the Member State of destination." http://www.scotland.gov.uk/Publications/2013/11/5894/12; accessed August 12, 2014.

to extend the compliance dates for formulators. The letter requested that OSHA provide a letter of interpretation or agree to the proposed changes.

After receiving no response from OSHA, ACA requested another meeting in early 2014. ACA met with OSHA staff again on March 13, 2014, and reiterated its concerns with respect to the single implementation date. At this meeting, OSHA indicated that it did not intend to respond to ACA's September 27, 2013 request letter and refused to accept the industry's proposal for relief.

Since that time ACA had the opportunity, as part of a larger industry meeting, to raise the industry's concerns directly with Dr. David Michaels. Far from dismissing ACA's concerns, Dr. Michaels invited follow up, an invitation accepted by this Petition.

III. The HCS Alternatives That Petitioners Will Use During the Proposed Two-Year Phase In Will Achieve Effective Safety and Health for Affected Workers - and *Greater* Safety and Health Thereafter

Petitioners seek a two-year phase in for the compliance deadline for formulations. This request is premised on the fact that petitioners have methods that will achieve effective safety and health for affected workers during that two-year phase-in period.

Warnings about acute hazards that comply with the current standard or with the ACA Industry Labeling Guide, Fifth Edition, the Federal Hazardous Substances Act (FHSA), or the American National Standards Institute (ANSI) standard, *Precautionary Labeling for Hazardous Industrial Chemicals* will be essentially equivalent in substance to those required by the new HCS. In a September 5, 2013 meeting with ACA, OSHA officials acknowledged the efficacy of labels that were prepared in accordance with ACA's Industry Labeling Guide, Advance Supplement to the Sixth Edition and their consistency with the information required under the revised HCS (and the GHS). Petitioners assert that such labels and their associated Material Safety Data Sheets (MSDSs) are sufficient for use during the additional two-year period sought by the petitioners. It is important to note that in a letter from Frank White dated September 10, 1987, then Deputy Assistant Secretary of OSHA, to the National Paint and Coatings Association (now ACA), OSHA stated "The [specific "target organ effect" industry] guidance provided in the labeling guide should serve as a practical tool for professionals responsible for hazard determination under the Hazard Communication Standard. When used in conjunction with the Hazard Communication Standard, the manual will greatly assist employers in making proper compliance decisions" (see appendix E). A delay of two years from leaving in place the current standard or allowing compliance with these alternative procedures will not materially affect the long-term risk from exposures to workplace hazards whose time horizon is measured over a working lifetime.

A two-year phase-in period will result in *greater* safety and health because the hazard assessments will be more accurate. The current single deadline will compel formulations manufacturers to issue SDSs and labels that are premised upon conjecture and extrapolations from existing literature about similar but not identical materials. The SDSs and labels that flow from this process will essentially be stop-gap measures taken for the purpose of compliance and not for the purpose of thoughtfully disseminating information to adequately warn affected

employees of actual dangers as identified by the actual manufacturers of the basic ingredient materials.

During the two-year phase-in period, Petitioners propose that OSHA permit compliance with the existing 1994 HCS standard. The agency and all affected parties must be able to converge on the reasonable stipulation that the 1994 standard successfully achieves adequate warnings to affected workers but for its non-compliance with GHS principles. Therefore, Petitioners propose that formulators be permitted to comply with the 1994 HCS standard for only an additional two years – while manufacturers of basic ingredients should comply with the June 1, 2015 deadline.

IV. Conflicts created by the HCS Rule between Product Labels and SDSs

The HCS rule and preamble acknowledge that labels of products registered by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are exempt from GHS requirements, recognizing the strong and well established regulatory system that adequately communicates risks of those products to the users. Nevertheless, OSHA did not exempt those same products from GHS requirements for the SDSs, setting up conflicts between labels and SDSs that may confuse product users and state regulatory agencies. All this occurred despite meticulous efforts by the affected industries to explain the situation during the years-long notice-and-comment period for the HCS rule. The preamble demonstrated the continued lack of understanding by OSHA of the problems that the situation creates, rather than acknowledging the arguments and deciding on their merits. Following publication of OSHA's final rule, EPA awkwardly addressed the situation by instructing FIFRA registrants to "… include in their SDSs the FIFRA label information and a brief explanation for any differences between that information and the SDS information." See EPA's Pesticide Registration Notice 2012-1, p. 4. This is not an acceptable long-term solution. Now would be a good opportunity to address these conflicts in the rule itself.

V. Actions OSHA Can Take To Address The Issue

OSHA has several options that it can use to address the issue.

First, OSHA can propose an amendment to the rule modifying the implementation deadlines to allow chemical manufacturer, importers, and distributors of formulated products an additional two years to comply with the requirements. In a previous letter, ACA suggested one potential option to amend the rule and provide relief by incorporating the following underlined language into 29 C.F.R. § 1910.1200(j)(2):

(j) **Effective dates.** (2) Chemical manufacturers, importers, distributors, and employers shall be in compliance with all modified provisions of this section no later than June 1, 2015, except:

> (i) After December 1, 2015, the distributor of chemical substances shall not ship containers labeled by the chemical manufacturer or importer unless the label has been modified to comply with paragraph (f)(1) of this section.

(ii)After June 1, 2017, chemical manufacturers, importers, and distributors of formulated products shall not manufacture or import products unless the label and Safety Data Sheets have been modified to comply with paragraphs (f) and (g) of this section.

The petitioners propose the following new definition:

"Formulated product" means a complex chemical mixture comprised of two or more substances or mixtures in a final form that do not react to form other chemical substances, such as, but not limited to, paints, coatings, adhesives, sealants, caulks, pesticides, fertilizers, cleaning products and printing inks.

Second, OSHA can grant a temporary variance to any formulators who comply with one of the labeling alternatives mentioned above. Applications for a temporary variance will be submitted separately, if the necessity arises, and will rely on compliance with one of the previously mentioned alternatives in Section III to protect workers during the variance period. Language similar to that above can be used to define the scope and application of the variance. We emphasize that we are not asking for relief from the standard itself, only from the unrealistic deadline.

Third, OSHA could adopt a position that compliance with any of the above mentioned alternatives is a *de minimis* violation for the two-year period. As noted, the proposed alternatives provide effective warnings so that safety and health will not be compromised during the phase in period.

Clearly, OSHA has demonstrated an understanding of the problems with final rule by issuing is a letter of interpretation to address SDSs not flowing down the supply chain to employers. Although § (j)(2) states employers must be in compliance as of June 1, 2015, OSHA stated in this letter of interpretation to Mr. Ross Olsby and M3V Management that the agency "…would not issue citations for maintenance of MSDSs when SDSs have not been received." (see Appendix D). The petitioners believe that it is only reasonable to apply similar relief to other downstream users of SDSs, such as formulators.

VI. Conclusion

For the foregoing reasons, the Petitioners request that OSHA take administrative action to modify the implementation deadlines specifically as applied to manufacturers of formulations. Petitioners believe that as much as three years beyond the June 1, 2015 deadline is necessary but that a two year extension presents a reasonable middle ground. OSHA can: 1) open a rulemaking to amend the standard providing a two-year phase-in period; 2) grant a temporary variance as described: or 3) adopt an enforcement position that compliance with alternative standards makes non-compliance with the GHS requirements a *de minimis* violation during the phase-in period.

While there are alternative solutions that the agency may settle upon, none will provide the suitable resolution to the problem created by the initial rulemaking with the same certainty as a revised rule.

Because the remaining time before the existing deadline is already unworkable, Petitioners request that the Agency provide a reply within the next thirty days as to its intentions. Petitioners are available to meet with OSHA officials to discuss the issues presented herein at OSHA's convenience. Please contact Stephen Wieroniey at 202-719-6387 or swieroniey@paint.org to arrange a meeting as soon as possible.

Sincerely,

Matthew E. Croson
President
Adhesive and Sealant Council

J. Andrew Doyle
President and Chief Executive Officer
American Coatings Association

Tom Dobbins
President
American Composites Manufacturers Association

Jay J. Vroom
President and Chief Executive Officer
CropLife America

John P. Garfinkel
Executive Director
ISSA, The Worldwide Cleaning Industry Association

Eric Byer
President
National Association of Chemical Distributors

Jay Timmons
President and Chief Executive Officer
National Association of Manufacturers

Aaron Hobbs
President
RISE (Responsible Industry for a Sound Environment)

Larry Sloan
President
Society of Chemical Manufacturers and Affiliates

David Sarvadi
Counsel
Keller and Heckman, LLP

Manesh Rath
Counsel
Keller and Heckman, LLP

Appendix A:
Description of Trades Petitioning OSHA

Adhesive and Sealant Council 7101 Wisconsin Ave Bethesda, MD 20814	
The Adhesive and Sealant Council (ASC) is a North American trade association dedicated to representing the $40 billion global adhesive and sealant industry. The Council is comprised of 131 adhesive and sealant manufacturers, raw material and equipment suppliers, representing 75% of the U.S. industry. "Innovators secure the future with adhesives and sealants" is the vision of ASC, and the Council produces programs that support five strategic objectives covering Career Education, Community Knowledge Integration, Innovation, Unified Industry Voice and Accelerate Growth. Information on ASC can be found at www.ascouncil.org. Industry solutions and news can be found at www.adhesives.org or www.sealants.org.	
Matthew E. Croson President	Staff Contact: Mark Collatz Director of Regulatory Affairs (301) 986-9700 mark.collatz@ascouncil.org

American Coatings Association 1500 Rhode Island Avenue, N.W. Washington, D.C. 20005	
The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents technical professionals and over 200 paint and coatings manufacturers, raw materials suppliers, and distributors. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. The manufacturing, sale, and distribution of paints and coatings are a $20 billion dollar industry in the United States. ACA's membership represents over 90% of the total domestic production of paints and coatings in the United States.	
J. Andrew Doyle President and Chief Executive Officer	Staff Contact: Stephen Wieroniey Specialist; Health, Safety and Environmental Policy 202-719-3687 swieroniey@paint.org

American Composites Manufacturers Association 3033 Wilson Blvd., Ste. 420 Arlington, VA 22201	
The American Composites Manufacturers Association represents an industry of some 3,000 small and medium sized companies using formulated resin mixtures and other substances to produce strong, light weight, corrosion resistant and durable products such as wind turbine blades, pollution control equipment, sporting and recreational equipment, kitchen and bath products, structural components for highway bridges, and process equipment for food, chemical, mineral, paper and fuel production.	
Tom Dobbins President	Staff Contact: John Schweitzer Vice President, Government Affairs 703-604-9095 jschweitzer@acmanet.org

CropLife America 1156 15th Street NW, Suite 400 Washington, DC 20005	
CropLife America is the crop protection association that represents the companies that develop, manufacture, formulate and distribute crop protection chemicals and plant science solutions for agriculture and pest management in the United States. CLA's member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers.	
Jay J. Vroom President and Chief Executive Officer	Staff Contact: Ray S. McAllister, PhD Senior Director, Regulatory Policy 202-872-3874 rmcallister@croplifeamerica.org

ISSA, The Worldwide Cleaning Industry Association 3300 Dundee Road Northbrook, IL 60062	
ISSA, the Worldwide Cleaning Industry Association, represents over 6,400 member companies worldwide including manufacturers and distributors of cleaning products as well as professional cleaning service providers.	
John P. Garfinkel Executive Director	Staff Contact: Bill Balek Director of Legislative Affairs 1-800-225-4772 bill@issa.com

National Association of Chemical Distributors 1560 Wilson Boulevard, Suite 1100 Arlington, VA 22209	
The National Association of Chemical Distributors (NACD), established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, transport, and market these chemical products for over 750,000 customers. NACD's more than 400 member and affiliate companies represent more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Member companies are largely entrepreneurial and generally service a particular geographic region or industrial sector. They are typically small businesses, although some companies are national or international in scope. They know their products and processes, and provide value-added services to their customers in a professional, responsible manner. All member companies are committed to product stewardship and responsible distribution in every phase of chemical storage, handling, transportation, and disposal. A member-voted condition of membership in the Association is a signed commitment to the NACD's Responsible Distribution, which requires members to continuously improve performance in protecting health, safety, security, and the environment.	
Eric Byer President	Staff Contact: Jennifer C. Gibson Vice President, Regulatory Affairs (571) 482-3047 jgibson@nacd.com

The National Association of Manufacturers 733 10th Street, NW, Suite 700 Washington, DC 20001	
The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.	
Jay Timmons President and Chief Executive Officer	Staff Contact: Joe Trauger Vice President, Human Resources Policy National Association of Manufacturers (202) 637-3127 jtrauger@nam.org

RISE (Responsible Industry for Sound Environment) 1156 15th Street, NW Suite 400 Washington, DC 20005	
Responsible Industry for Sound Environment (RISE) is the national trade association representing manufacturers, formulators, distributors and other industry leaders involved with specialty pesticide and fertilizer products.	
Aaron Hobbs President	Staff Contact: Stephanie Binns Policy Coordinator 202-872-3862 sbinns@pestfacts.org

Society of Chemical Manufacturers and Affiliates 1850 M Street NW, Ste. 700 Washington, DC 20036	
SOCMA is the only U.S.-based trade association dedicated solely to the batch, custom and specialty chemical industry. Since 1921, we have represented a diverse membership of small, medium and large chemical companies, making us the leading authority on this sector. SOCMA has a global membership of 220 companies, which employ more than 46,000 workers in the U.S. alone. The value of the products and services provided by SOCMA members is $24 billion, and the industry's impact on the U.S. GDP is upwards of $2.9 trillion. For more information on our services and products, please visit www.socma.com.	
Larry Sloan President	Staff Contact: C. Elizabeth O'Neal, MPA Government Relations Chemical Safety and Security Policy (202) 721-4198 oneale@socma.com

Appendix B:
Petitioner's Questionnaire to Member Companies

OUTLINE
American Coatings Association and
Keller and Heckman LLP
Member Call Re: Single Deadline For Basic Chemicals and Products
Thursday, July 3, 2014

I. How Formulators Are Gathering Information for Revised SDS and Labels
   A. How is your organization getting information necessary to update SDSs?
   B. Have you involved your purchasing department in a general solicitation?
   C. Are you waiting to receive them as the suppliers send them out?

II. Existing Efforts To Coordinate With Suppliers
   A. Has your organization communicated to your suppliers a requirement to submit updated SDSs before June 1, 2015?

III. Methods For Preparing Revised SDS
   A. Is your organization using software for SDS preparation?
   B. What information does the software require to classify a product?
   C. Do you have to manually edit the resulting SDS/label?
   D. Where does the software get the data on the substances to be classified?
   E. How are chemicals that react with one another in a mixture handled by the software?

IV. Timeline for Compliance
   A. Is your organization going to prepare updated SDS prior receipt of updated component material SDSs (by using mixing principles, your own research, etc.)?
      1. Is your organization doing full online searches for the data, or
      2. Are you relying on old MSDS?
   B. Will this method result in needed to redo MSDs when suppliers provide their corrected SDSs?
   C. Is your organization intending to wait until all component material SDSs are submitted to you?

V. Estimated percent of necessary component SDSs that you will receive from suppliers prior to June 1.

VI. How many products will need updated SDSs and labels, please consider products with multiple container sizes as individual labels?

VII. How many raw material suppliers do you have?
   A. How deep is your supply chain?

VIII. How many raw materials are formulated products? Basic chemicals?

IX. How many basic chemicals contain additives or processing aids?

X. How deep is your distribution chain?
   A. How many distributors do you have?

B. How many containers in inventory at each distributor (1-100, 101-500, 501-1000, >1000)
C. What is the average shelf life of your products?
    a. Solvent based products?
    b. Water based products?

XI. Of your products, how many are unique chemical mixtures such that the hazards are different and would have different warnings on the label and SDS?

XII. Are your labels specific to the United States?

XIII. Are your labels designed to comply with both Canada and US requirements?

XIV. How long does it take to update each label?

XV. What is lead time on getting labels printed?

XVI. What is the lead time on getting containers printed? (When the actual container is printed, such as the caulk tubes or lithographed cans)

XVII. Classification Issues
A. Are you selling products in another jurisdiction which has implemented the GHS?
    a. How many products?
B. Are your receiving GHS classified SDS from other jurisdiction which differ from US HCS classification?
    a. How many have your received?

XVIII. How long does a product sit on your warehouse floor between end of production and shipment?

Appendix C:
ACA's Letter to OSHA Dated September 27, 2013

American Coatings ASSOCIATION

September 27, 2013

Kathy Landkrohn, ASP
Occupational Health and Safety Administration
OSHA Directorate of Standards & Guidance
200 Constitution Avenue, N.W.
Washington, DC 20210
Via Electronic Mail Only

Re: Follow up to the September 5, 2013 meeting

Dear Ms. Landkrohn:

Thank you for taking the time to meet with us and representatives of the paint and coatings industry. The American Coatings Association (ACA or the Association) is pleased with OSHA's outreach to industry and willingness to hear, understand, and help solve some of the challenges facing the regulated community. As mentioned in our meeting, our members have concerns with treatment of tinted products and the current compliance date schedule for the Revised Hazard Communication Standard (Revised HCS).

In the past, many end users of paint seeking custom color products would purchase the products "pre-mixed" from the distributor and receive the (Material) Safety Data Sheet (SDS) for each component mixed to create the custom color paint. In a seemingly dramatic departure from this practice, OSHA has suggested that distributors must now immediately produce and provide a single, discreet SDS for every custom color paint they pre-mix. This requirement is creating a multitude of concerns for distributors, an entity who never envisioned themselves to be "chemical manufacturers", by requiring them to develop costly and complex systems for producing discrete SDS for "custom tinted" products. Moreover, paint manufacturers never envisioned this change in practice during the administrative process leading up to the Revised HCS. There are literally millions of paint color combinations that distributors sell. Many of the color variations are chosen on site by the customer – requiring a distributor to provide a SDS for each tinted product, each color variation, is unnecessarily burdensome for the distributor and the paint industry.

It is important to note that paint and coatings distributors are not "attaching multiple SDSs for the ingredients of the paint product itself," but rather are providing end users with SDSs for the purchased paint in a manner that requires separate but linked documents for each component blended at the distribution point. It is important for OSHA to recognize the special nature of tinted products under the Revised HCS, and that it uniquely affects paint distributors and the paint industry. We are unaware of any instance where the industry's longstanding practice with respect to (M)SDS for tinted products has been found deficient. ACA members have very sophisticated, long-established HCS compliance programs, and spent considerable sums of money to develop them over the last 35 years. Our member's distributors do not produce SDSs, and any requirement to create a system to provide discreet

SDSs for each and every possible color combination of "tinted" paint at the distribution point was never contemplated in the administrative process that led to the final rule. ACA views OSHA's new interpretation as unnecessary in light of the fact that it fails to address any perceived hazard communication "need".

As mentioned during the meeting, it is unreasonable to expect distributors to create individual SDSs for every single color variation of paint, and **we would like OSHA to acknowledge in *writing* that a distributor of a paint or coatings company will not be cited for failing to create an individual SDS for tinted products.** In the preamble to the final rule, OSHA has stated that

> 'Concentration ranges, rather than concentrations, may be used in other situations. For example, the final standard includes the longstanding provision that addresses the use of a single SDS for complex mixtures in paragraph (g)(4). Under this provision, where complex mixtures have similar hazards and contents (the ingredients are essentially the same, but the specific composition varies from mixture to mixture), one SDS may be used for all of these similar mixtures. Petroleum streams would be an example of a type of complex mixture to which this provision applies. In this situation, concentration ranges may be used for the ingredients that vary from stream to stream.
>
> A chemical manufacturer or importer may also have a line of products that are very similar, but can be varied slightly in composition to meet the needs of customers. For example, toner colors may be changed by varying the amount of pigment. The variances are small, and the hazard remains the same. In these situations, concentration ranges may be used for multiple, similar products.' 77 *Fed. Reg.* 17731 (Mar. 26, 2012) (supplemental information).

According to the above-cited language, OSHA is permitting the use of generic SDS for different toner colors, provided the hazard remains the same. Therefore, if the hazards remain the same across different pigments, OSHA would seem to allow concentration ranges for products with several different pigments, again provided the SDS reflects all the hazards. Given the multitude of color combinations for paint coupled with the preamble language, there is adequate reason and logic to support the practice of providing separate SDS for components mixed at the distribution point (which is for the sole purpose of blending to achieve a specific color). There is also adequate reason to support the practice of providing one SDS for multiple colors, using ranges to communicate the possible presence of various pigments, provided that the hazards are consistent and that adequate hazard warnings are provided.

Lastly, the current compliance date schedule for the Revised HCS is unworkable. OSHA has chosen to enforce compliance dates based on a shipping date, rather than a manufacture date. This is problematic for industry because it would require companies to somehow start offering labeling aligned with uncertain, or unavailable GHS classifications prior to June 1, 2015. To date, paint and coatings manufacturers have received a scant 2% of required data from raw material suppliers. Given the unpredictability of the required information exchange and the other administrative barriers to establishing an effective compliance strategy, the current timeframe is too short and unrealistic. Raw material suppliers are allowed to withhold useful compliance information until June 1, 2015; as a result, it is not feasible to require downstream manufacturers to comply by June 1, 2015. Simple fairness requires additional compliance time for manufacturers of mixtures (formulators) such as paint and coatings companies. Other national governments (most notably the European Union) have recognized

this distinction and provided additional time for downstream compliance. Industry advocates are also seeking to have Canadian authorities embrace a two-tiered compliance schedule with a compliance date for mixtures based on the date of manufacture, giving adequate time for formulators of mixtures to integrate raw materials supplier's GHS-conforming hazard classifications into the classification of the final product.

ACA strongly urges OSHA to adopt the following language that simply changes the December 1, 2015 compliance requirement to a manufacture date rather than a shipped date and, in the interest of fairness, provide additional time for downstream users to comply.

"(j) **Effective dates.** (1) Employers shall train employees regarding the new label elements and safety data sheets format by December 1, 2013.

(2) Chemical manufacturers, importers, distributors, and employers shall be in compliance with all modified provisions of this section no later than June 1, 2015, except:

(i) After December 1, 2015, the distributor of chemical substances shall not ship containers labeled by the chemical manufacturer or importer unless the label has been modified to comply with paragraph (f)(1) of this section.

(ii)After December 1, 2016, the chemical manufacturer of mixtures shall not manufacture or import products unless the label and Safety Data Sheets have been modified to comply with paragraphs (f) and (g) of this section.[1]

(iii) All employers shall, as necessary, update any alternative workplace labeling used under paragraph (f)(6), update the hazard communication program required by paragraph (h)(1), and provide any additional employee training in accordance with paragraph (h)(3) for newly identified physical or health hazards no later than June 1, 2016.

(3) Chemical manufacturers, importers, distributors, and employers may comply with either §1910.1200 revised as of October 1, 2011, or the current version of this standard, or both during the transition period."

- Adapted from HCS Final Regulatory text 2012 (j)

[1] Given that many companies currently include the date of manufacture on their products, ACA would support an explicit requirement to include the date of manufacture on products. Here is suggested regulatory language that could be added as the last sentence in Section (j)(ii): "The chemical mixture manufacture shall mark each container with the date of manufacture or a way to determine the date of manufacture on containers whose labels do not comply with paragraph (f)."

This minor change for chemical mixture manufacturers would acknowledge:

- the inventory control practice of most industries (first in – first out);
- the inability of manufacturers to impact product already released into the supply chain/distribution networks; and
- the need to repair the basic unfairness of requiring raw materials suppliers and formulators to comply at the same time when the latter's actions are dependent on the former.

ACA remains strongly supportive of OSHA's efforts to implement the Revised HCS and seek regulations that fairly harmonize US labeling practice with other national regulatory regimes. However, we believe that OSHA should do everything possible to ensure that the supply chain is not overly burdened by these new regulations.

Thank you for being receptive to our solutions during the meeting. ACA offers its support for wider implementation of GHS by other regulatory agencies, including the Consumer Product Specialty Commission, in a manner that reinforces the "right to know" approach to chemical management. We hope that OSHA will seriously consider our request for a Letter of Interpretation and proposed change in the regulations. We look forward to working with you and your colleagues on these very important issues.

Respectfully,

Steve Sides, CIH
Vice-President
Science, Technology and Environmental Policy

Alison Keane, Esq.
Vice-President
Government Affairs

Stephen Wieroniey
Specialist
Health, Safety and Environmental Affairs

Appendix D:
OSHA Letter of Interpretation re: Replacing MSDSs with SDSs

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

JUN 13 2014

Mr. Ross Olsby
M3V Data Management
11925 East 65th Street
Indianapolis, Indiana 46236

Dear Mr. Olsby:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. You requested guidance on replacing material safety data sheets (MSDSs) with newer safety data sheets (SDSs) under OSHA's revised Hazard Communication Standard, 29 CFR 1910.1200 (HCS 2012). This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any questions not delineated within your original correspondence. Your questions have been paraphrased, followed by our response.

Question: When is an employer required to replace their MSDS collection with revised SDSs in order to be in compliance with HCS 2012? Would OSHA take enforcement action against employers who only have an MSDS available to employees?

Response: OSHA's final rule modifying the Hazard Communication Standard (HCS) was issued on March 26, 2012, and it became effective on May 25, 2012 [77 FR 17574-17896]. Under 1910.1200(j)(2), manufacturers, importers, and distributors must be providing SDSs (instead of MSDSs) for all shipments of hazardous chemicals to employers and downstream customers by June 1, 2015. SDSs may be provided before this date; however, for any shipment of chemicals after June 1, 2015, an SDS in the required 16-section format must be provided.

All employers, per 1910.1200(g)(1) and 1910.1200(g)(8), must have, maintain, and make available to employees the most recent MSDS or SDS received from a chemical manufacturer, importer, or distributor for each hazardous chemical in the workplace. If the employer is not maintaining the most current MSDS or SDS received, then enforcement action may occur. However, OSHA would not issue citations for maintenance of MSDSs when SDSs have not been received. As OSHA explained in the January 31, 2013, letter to Mr. Joel Gregier employers may, but are not required to, contact manufacturers or distributers of products they have previously ordered to request new SDSs, and under 1910.1200(g)(6)(vi), the SDSs must be provided.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2100.

Sincerely

for Thomas Galassi, Director
Directorate of Enforcement Programs

Appendix E:
OSHA Letter to NPCA (ACA) re: Labeling Guide

• **Standard Number:** 1910.1200

September 10, 1987

Mr. J. Andrew Doyle
Counsel National Paint & Coatings Association
1500 Rhode Island Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Doyle:

Thank you for the opportunity to review and comment on the National Paint and Coatings Association's (NPCA) Health Effects Labeling Approach (Advance Supplement to Volume II May 7, 1987).

The guidance provided in the labeling guide should serve as a practical tool for professionals responsible for hazard determination under the Hazard Communication Standard. When used in conjunction with the Hazard Communication Standard the manual will greatly assist employers in making proper compliance decisions. However, the use of the "Approach" may not guarantee that an employer will always be in compliance with the standard. Compliance officers will judge the adequacy of an employer's hazard determination decisions based on the scientific facts and the standard's requirements on a case by case basis.

The need for professional judgment relative to the Hazard Communication Standard is established by the very nature of the regulation. Accordingly, the application of specifications or cut-offs is incompatible with the performance orientation of the standard. For this reason, the concept of a numerical threshold for determining labeling obligations is not consistent with the intent of the Hazard Communication Standard. Professionals will generally agree that some threshold level is necessary, but they will rarely agree on the level for a single chemical. We are pleased to see the NPCA agrees with this concept. The Agency supports the use of the "Approach" and believes that when NPCA members use it correctly and in conjunction with the Hazard Communication Standard compliance will be achieved.

Once Again, thank you for permitting us to review your work. Please feel free to call on us again.

Sincerely,

Frank White
Deputy Assistant Secretary