



## The Soap and Detergent Association

November 13, 2006

OSHA Docket Office  
Docket No. H-022K  
Room N2625  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Docket No. H-022K: Advanced Notice of Proposed Rulemaking, *Federal Register*  
(September 12, 2006, Vol. 17, No. 176, 53617-53627)

Dear Sir or Madam:

The Soap and Detergent Association (SDA) appreciates the opportunity to comment on the Occupational Health and Safety Administration's (OSHA) Advanced Notice of Proposed Rulemaking (ANPR) seeking further information about the Globally Harmonized System (GHS) of Classification and Labeling of Chemicals, the benefits of adopting it, and its potential impact on the Hazard Communications Standard (HCS), which was published in the *Federal Register* on September 12, 2006.

The Soap and Detergent Association is the national trade association representing manufacturers of household, industrial and institutional cleaning products; their ingredients; and finished packaging. SDA members produce more than 90% of the cleaning products marketed in the U.S. SDA members produce chemicals and formulate finished products that are subject to the existing HCS and, therefore, would have a significant interest in proposed revisions to the regulation.

SDA supports adoption of the GHS and urges OSHA to move toward efficient and timely implementation of the GHS for workplace chemicals. The benefits to any country implementing the GHS will be realized only with a high level of co-ordination and harmonization within the affected sectors in North American, Europe, and Asia-Pacific. No jurisdiction can meaningfully implement the GHS in isolation. Consistent implementation among US trading partners is crucial to realize the benefits of a globally harmonized system.

Failure to implement the GHS in a timely manner could lead to adoption of an EU-style hazard communication system by our trading partners with the OSHA workplace system being the exception. Therefore, it is important that the agency make every effort to implement the GHS by 2008, consistent with the U.S. support for implementation in various inter-governmental fora. The timing for OSHA's efforts is critical, since major trading partners are now issuing proposed and final implementing regulations, and more

are on the horizon. Failure to move quickly toward implementation could result in trade barriers with serious economic impacts on the U.S. economy. Importantly, a rapid implementation of GHS for workplace chemicals in the United States would also establish U.S. leadership in promoting the implementation of a practical and effective GHS around the world for this sector.

SDA appreciates the agency's decision to gather information relevant to potential changes to the GHS through the ANPR prior to issuing a final proposal. For regulations as complex and with such great potential impact as the HCS, it is very important to obtain and give serious consideration to feedback from all affected parties.

As background to SDA's comments on the ANPR, SDA supports the following key elements when implementing the GHS:

***Application of the "Building Block Approach"***

Taking into account that different target audiences have differing safety information requirements, the GHS provides the flexibility to meet specific user needs through the Building Block Approach.

***Maximum use of existing data without mandated test methods***

One of the central objectives of the GHS is to "reduce the need for testing and evaluation of chemicals and mixtures." It does not require additional testing of chemical substances or mixtures, plus it is "based on currently available data." When data from scientifically robust, non-animal test approaches (e.g., human experience, bridging data, *in vitro* tests, SAR/QSAR, *in silico* approaches) are available, this information may be used for classification.

***Precedence of human experience over other information***

The GHS document says "Generally, data of good quality and reliability in humans will have precedence over other data." This is a key concept, especially in determining appropriate labeling for consumer products.

***Use of a weight-of-evidence approach in classification decision***

It is important to consider the weight and credibility of the evidence, taking into account the reliability and consistency of data and all available information. The GHS document says, "For some hazard classes, classification results directly when the data satisfy the criteria. For others, classification of a substance or a mixture is made on the basis of the total weight of evidence. This means that all available information bearing on the determination of toxicity is considered together, including the results of valid *in vitro* tests, relevant animal data, and human

experience such as epidemiological and clinical studies and well-documented case reports and observations.”

### ***Protection of Confidential Business Information***

The GHS document says, “The competent authority should protect the confidentiality of the information in accordance with applicable law and practice.” Authorities should continue their practices to protect confidential business information.

The following are SDA’s comments addressing questions presented in the ANPR. Only questions to which SDA is responding are presented.

### **CURRENT SITUATION**

As a general comment, estimates of the burden for complying with proposed revisions to the HCS (e.g. training, label revisions, MSDS revisions) are difficult to generate without a specific proposal and would be highly variable across industry. However, OSHA can help minimize the burden on industry by modifying only those sections of the HCS that must be changed to be consistent with GHS. As stated in OSHA’s ANPR, these sections would be the Hazard Determination, MSDS, and Label sections.

### **TIMING**

- 8. What is a reasonable time period for phasing in the modifications? Should the phasing be done by size of business? Are there any other factors that should be considered to differentiate the phasing?**

A transition period after the effective date of the final regulation is required for chemical and product producers to reclassify, create new labels, deplete existing inventories of labels and product, and sell through existing stock. SDA recommends a multi-tiered approach to implementation to allow time for information to be generated in upstream stages of the supply of chain that could be used by downstream stages to facilitate compliance.

Following the promulgation of a final regulation implementing the GHS, an appropriate transition period is required to enable manufacturers (or importers) of substances (including technical grade raw materials from chemical producers) to reclassify substances and mixtures, create new labels, deplete existing inventories of labels and product, and sell through existing stock.

These substances could be brought to market as intermediates or pre-mixtures, which themselves would require a transition period to reclassify them, create new labels, deplete existing inventories of labels and product, and sell through existing stock. This transition

period could start during the initial phase for substances, but should continue past the deadline for transitioning substances to the revised HCS.

Finally, since formulators of institutional and consumer products may require information about the component materials that they purchase from their suppliers in order to classify their formulated products according to GHS, an additional transition period, beyond that provided to the manufacturers of chemicals and intermediates/pre-mixtures is needed for the producers of formulated products. This transition period could start during the earlier transition periods, but should continue past the deadline for transitioning intermediates and pre-mixtures to the revised HCS.

Regardless of their position in the supply chain, (i.e., chemical manufacturers, intermediate/pre-mixture producers, product formulators), a company should be allowed to begin to transition their products to GHS-compliant labels as soon as the final regulation is in effect. They should be required to have completed the transition for their production/importation by the conclusion of their respective transition periods. In this way, all members of the regulated community would be able to make orderly changeovers consistent with reasonable business practices.

Phased-in compliance based on company size is unacceptable. Both small and large businesses use materials of the other in creating end-use products.

#### **9. What is the normal cycle for updating labels and safety data sheets?**

There is no “normal cycle” for updating labels and SDS. Products could have changes that occur several times per year, while others do not change for many years. For example, certain classes of products or those containing particular ingredients may experience more change due to performance or cost. We are unaware of any sources of information that address this question across our industry.

#### **10. Do you have stockpiles of product that are already labeled? How long will those stockpiles last?**

The onus should be on the manufacturer or importer of the materials, not on parties in the distribution chain, to ensure compliance with classification and labeling requirements. Controls should be applied to prevent manufacturing or importing beyond a certain time, but no restrictions should be placed on the sale of legally produced or imported chemicals or products.

Raw Materials in stock for product production could have many years of inventory (depending on the particular material and its use). Stockpiles of products vary significantly and may have several months to several years of inventory. Additionally,

labeling and packaging components for those products may far exceed the “stockpile time” of produced product.

By design, implementation of the GHS will provide a similar level of protection compared to existing classification and labeling systems. Therefore, there is no reason to accelerate clearing existing stocks of product from the channels of commerce. Purchasers of chemicals and products are very familiar with current labels and will be learning about GHS-compliant labels as time passes. Thus, chemicals and products that were produced or imported legally under the current classification and labeling regulations should be allowed to pass through the channels of commerce without any requirement for retailers to stop sales after any particular date. Some form of code dating, indicating the date of production or importation would be needed to substantiate compliance.

A possible concern with the lack of a stop sale date is that producers or importers may build extraordinary stockpiles of materials labeled according to the current system. In reality, the cost of maintaining an inventory of any substantial size far outweighs any possible business advantage that could be gained by continuing to sell product with current labeling. Thus, only relatively small volumes of pre-GHS product are likely to remain in the channels of commerce. Given that the level of protection is similar under either labeling system, an effort to remove such product from commerce is not warranted.

**11. Do you have any other information or data that would help OSHA determine the appropriate phasing in of the new requirements or other issues related to timing?**

SDA urges OSHA to coordinate implementation of revisions to the HCS related to the GHS with the Environmental Protection Agency (EPA), Department of Transportation (DOT) and the Consumer Product Safety Commission (CPSC), which all have announced their intentions to implement GHS provisions in their regulations. Workplace hazard communication occurs in a stage of the overall life cycle of chemicals and finished products. Coordination and synchronization of implementation timing could greatly improve the efficiency of implementation of the GHS by industry.

**TECHNICAL ISSUES**

**12. Are there any health or physical hazards that are currently covered by the HCS that you think are not adequately addressed in the GHS criteria? What are they and why do you think they are not adequately addressed? Are there any health or physical hazards that aren't covered in either the HCS or the GHS that should be added?**

SDA supports OSHA’s proposed application of the “building block approach” in selecting provisions of the GHS applicable to the HCS. Specifically, since OSHA does

November 13, 2006

not have the regulatory authority to address environmental concerns, SDA supports OSHA's proposal to not adopt the GHS criteria for aquatic toxicity. Further, the ANPR notes that the acute toxicity criteria are much broader than those currently in the HCS for workplace exposures. Components that provide consumer product authorities with the tools to address the protection of children who might accidentally be exposed are not appropriate for the workplace. Therefore, OSHA should not adopt all of the categories of acute toxicity in order to protect employees from the types of exposures they may have. In particular, OSHA should not adopt Category 5 of the GHS acute toxicity endpoints.

**13. In addition to references to hazardous chemicals with OSHA PELs, should OSHA propose to include any other listing of hazardous chemicals when aligning the hazard determination provisions of the HCS to the GHS?**

No, this should be the responsibility of the company producing the MSDS.

**Should OSHA propose that the mixture provisions only reference exceeding the OSHA PEL when revised to adopt the GHS?**

The OSHA proposal that the mixture provisions only reference exceeding the OSHA PEL when revised to adopt the GHS relative to specific limits is appropriate, but the additional language now there which states, "could present a health risk to employees; and,..." should also be included.

**Should other recommended exposure limits be included on the SDS?**

As expressed with the current performance language, "any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available..." should be included in the SDS.

**14. Within the health hazard criteria, are there any categories of hazard that should not be adopted in the HCS? For example, should OSHA adopt all of the categories addressed in the acute toxicity criteria? If not, what categories would be appropriate to address anticipated workplace exposures?**

SDA strongly supports OSHA's intent to maintain the scope, application, exemptions, and interpretations of the current HCS. Not only will this help minimize the implementation burden on industry, it should also serve to minimize confusion among employers and employees during the implementation period. OSHA should not implement any GHS hazard classes that are not already addressed by the current HCS.

**15. If OSHA changes the HCS to adopt the physical hazard criteria, how will that impact other OSHA standards that use the same criteria as the HCS? Does OSHA need to change those criteria at the same time the HCS is changed?**

November 13, 2006

**Storage and handling requirements for flammable liquids are one example that has been identified as a potential problem if different definitions apply, and information on a safety data sheet is linked to the definition in the HCS but not consistent with other definitions.**

OSHA should harmonize physical hazard definitions used in the HCS and other applicable OSHA standards (e.g., flammable liquids). As the Department of Transportation (DOT) is adopting the physical hazards for flammability, OSHA should also ensure consistency with the DOT regulations. To continue to have different definitions in different regulations would ultimately defeat the purpose of the harmonization.

### **COMPLIANCE ASSISTANCE AND OUTREACH**

**17. What products would be most useful to employers? Employees? Do you prefer paper publications? Electronic tools?**

Computer-based training would be preferred. Electronic tools are also preferred since search engines could be used to find information.

**18. What subjects would be of most interest? Classification criteria and procedures for substances and mixtures? Labels? Safety data sheets?**

New terminology should be defined and explained.

**19. What is the best way to distribute the materials to reach affected employers and employees?**

OSHA should consider developing a dedicated web page for this information.

**20. Are there any types of materials that would be especially appropriate for small businesses? Most small businesses would be users of chemicals, rather than producers, so they will be receiving labels and safety data sheets prepared according to the new approach. Are there training materials that would be helpful to learn or teach about the new approach? In particular, would training on symbols or pictograms be of use?**

Training on what symbols/pictograms are required when would be helpful. SDA also supports OSHA's intent to work with NIOSH to develop standard training materials to address changes in label elements (pictograms, signal words, and hazard warnings).

November 13, 2006

SDA is committed to the process for harmonizing chemical hazard classification and labeling and the development of quality systems. Please let us know if you would like to discuss our views and concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Sedlak". The signature is written in a cursive, flowing style.

Richard Sedlak  
Senior Vice President  
Technical & International Affairs