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April 8, 2013

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RE: Globally Harmonized System (GHS) update to Section 5194, Hazard Communication

Dear Mr. Smith:

Thank you for the opportunity to provide comments to the Cal/OSHA Advisory Committee considering changes to the state's Hazard Communication Standard and other Title 8 standards, as a result of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

The California Nurses Association (CNA) is comprised of 86,000 RNs throughout the State of California, and has been a staunch advocate for safe work environments for RNs and other health care workers; and for safe and quality care for patients. The majority of our members practice nursing in acute care settings, where they are routinely faced with occupational risks that can impact their health and wellbeing. These risks range from exposure to infectious diseases, to musculoskeletal injuries, to workplace violence. As such, we have a strong stake in matters pertaining to occupational health and safety, and want to use this opportunity to communicate our concerns over any actions that would weaken California's HazComm regulations, and strongly urge Cal/OSHA to adopt standards that will ensure workers have the information they need to be able to protect themselves from hazardous substances.

RNs and other health care workers can be exposed to harmful substances, sometimes without even knowing it. RNs and other healthcare workers who transport, prepare, administer and dispose of hazardous drugs can be exposed to these toxic agents in the air or on work surfaces, clothing, medical equipment and other surfaces. As a result, nurses, other healthcare workers and nonclinical workers are at risk for exposure when they create aerosols, mix liquids,

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generate dust, or touch contaminated surfaces if safe handling precautions are not followed. Exposure to hazardous drugs can cause cancer, reproductive and developmental problems, allergic reactions and other adverse effects that can be irreversible even after low-level exposures. For example, the Kaiser Permanente Center for Health Research published a study showing that exposure of pregnant women handling antineoplastic agents during pregnancy was associated with an increased risk for spontaneous abortions and stillbirth. In 2005, a survey of 7500 members of the Oncology Nursing Society found a significant increased risk for infertility and miscarriage among nurses less than 25 years of age working with chemotherapy.

It is vital that employees, including RNs and health care workers, maintain their right to know (RTK) about chemicals and any other hazardous substances they may be exposed to while on the job. As such, we do not believe California workers or the general public should give up hard-won RTK rights and requirements that are better than those internationally agree. We cannot rely on chemical companies to disclose hazards.

California is a consistent leader around occupational and environmental health issues (e.g., its own PELs, Prop 65, the “green chemistry” regulations). In fact, California’s 1980 RTK law and 1981 regulations preceded the federal regulations. The GHS international agreement allows innovative approaches like these to be retained or added. Further, the federal *Occupational Safety and Health Act* says that state-run plans should be “at least as effective as” the federal law and regulations, and can go beyond those “rules” in the context of compelling local conditions that do not unduly burden inter-state commerce. A 1997 court decision about the integration of Prop 65 and the HazComm Standard, and federal OSHA’s approval of the result, provide guidance about this.

Simply put, we want to uphold the spirit and principles of the GHS: provide more information to protect workers, the public and the environment. Providing less is not in compliance with the agreement.

Our principles

Our comments are informed by two sets of principles.

First, we support those in the international agreement. To quote from the “purple book”, the fourth edition of the GHS (2011, page 4), all involved agreed early in the long process to use principles that included:

- (a) *the level of protection offered to workers, consumers, the general public and the environment should not be reduced as a result of harmonizing the classification and labeling systems;*
- (b) *the hazard classification process refers principally to the hazards arising from the intrinsic properties of substances and mixtures, whether natural or synthetic;*
- (c) *harmonization means establishing a common and coherent basis for chemical hazard classification and communication, from which the **appropriate elements relevant to means of transport, consumer, worker and environment protection can be selected;***

(d) *the scope of harmonization includes both hazard classification criteria and hazard communication tools, e.g., labeling and safety data sheets, taking into account especially the four existing systems identified in the ILO report (in Canada, the European Union, the USA and the UN's transportation of dangerous goods recommendations);*

..
(g) ***the comprehension of chemical hazard information, by the target audience, e.g. workers, consumers and the general public should be addressed; .. (emphasis added).***

Second, in the current context of changing the California HazComm Standard, we also believe:

- ✓ Californians -- as workers, employers and members of the public -- have a right to know about the chemicals in the products they make and use, and the hazards of those substances and products. We need a HazComm regulation that provides information for public good, not one that allows it to be hidden for private profit.
- ✓ We want to harmonize up, not down. In doing so, we want to have the world's best rights, information and protection from hazards.
- ✓ Cal/OSHA has the responsibility, right and authority to maintain and improve the protection for workers and the public in its current Hazard Communication Standard and related Title 8 standards. Doing so is consistent with the spirit and letter of the GHS principles quoted above, and allowed under the federal Act.
- ✓ Retaining requirements that differ from the federal OSHA version of the GHS is not a burden to inter-state commerce and reflects compelling local conditions.
- ✓ Cal/OSHA and the Occupational Safety and Health Standards Board can, and should, increase the current protection in line with the real GHS, where that is available. They also should use this opportunity to support other proposals that increase protection for workers, their employers, and the public in general.

Specific Points

1. It is inaccurate to assert that California should adopt the federal OSHA version of GHS because it is "the" GHS.

The only true GHS is the latest version of the international agreement, as updated regularly by working committees. If we were to regulate according to "the" GHS:

- The Board would be adopting, much of the European Union's version of the GHS version which has no exemptions; consumer products would be labeled and there would be immediate notification of significant changes to an SDS, classification of all carcinogens, labeling of all ingredients, etc.
- We would be harmonizing upwards with the portions of the Workplace Materials Hazardous Information System (WHMIS) that Canadians have refused to change to harmonize with the United States (e.g., retaining 0.1 % disclosure rules for all carcinogens, reproductive toxins, respiratory sensitizers and mutagens; requiring updates promptly). Their argument: the level of protection will decrease, violating a fundamental principle of GHS.

- We would be following the Australian rules about disclosing all carcinogens, sensitizers and reproductive toxins whether or not they are considered a “trade secret”. And data sheets would be “amended when necessary to ensure it contains correct, current information, for example if new data becomes available which changes the chemical’s hazard classification”.

The chemical industry’s statements about this issue to the Standards Board are disingenuous and contrary to the principles and spirit of the “real” GHS. Harmonizing with the federal HCS, as revised with some GHS requirements, is NOT the same as harmonizing with the rest of the world. By saying (or implying) that, the industry is at odds with the needs and rights of workers, their employers, and their own customers.

2. Material safety data sheets/Safety data sheets

MSDSs have many uses. Businesses rely on MSDSs (soon to be called SDSs) to train employees, assess exposures, make product purchasing decisions, correctly characterize waste streams, and minimize hazardous waste.

In California, information on MSDSs is used in several specific ways, including:

- preparing the Hazardous Materials Business Plan and Hazardous Materials Management Plan, overseen by Cal/EPA and the local Certified Unified Program Agencies (CUPA);
- by the proposed *Safer Consumer Products Regulation*;
- in the Safe Cosmetics Program; and
- by consumers and environmental organizations.

Historically, and currently, these documents are an important source of information. Unfortunately, they also tend to be incomplete, inaccurate and difficult (sometimes impossible) to understand.

We support having a required format and consistency in SDSs. They would be most useful if all 16 sections were filled in and used. Workers and their employers need all this information in one place. We wear different hats than the simple labels of “employee” or “employer these days; “consumer products” are used in workplaces, chemical products are transported in many ways and environmental regulations (e.g., for hazardous waste) are tightly connected to what happens in a “workplace”.

3. Source lists

We support the continued use of source lists. They are consistent with the principles of the GHS, offering guidance for those classifying chemicals. They also help to ensure honesty, consistency, accuracy and quality in safety data sheets (SDSs) and labels. These features are essential for effective training and providing employers in the supply chain with the basis on which to make purchasing decisions that prevent employees and customers from dealing with hazards.

We support adding to the lists, using ones developed about the full range of hazard categories in the GHS (i.e., beyond carcinogenicity and reproductive effects). Our starting point is the latest version of the California *Safer Consumer Product Regulations* (aka the “green chemistry” regs) and the SIN2 list used in Europe. We are happy to provide other examples, particularly from the REACH system that the GHS is supplementing in Europe.

4. Use of “one positive scientifically valid study demonstrating an effect”

We support retaining this language to allow the information to be conveyed on SDSs and labels. We need it for historical reasons (e.g., see the European Environment Agency’s two reports about *Late lessons from early warnings*). We need it for fairness to chemical users/consumers, and to enable agencies such as California’s HESIS to alert employers, workers and the public about hazards. We need it so we don’t have more “late lessons from early warnings”, or new canaries like the DBCP and diacetyl workers.

5. Statement regarding testing

The GHS document and federal OSHA’s update to its HCS both say that available scientific evidence or literature is to be used for classification of hazards. It will be difficult to classify chemicals and their mixtures based on the limited testing that has been done for hazards, particularly chronic ones. While we advocate using reliable scientific information from tests that have been done, we want protection that includes the requirement to test when it is needed.

For this, and the other points we made, we encourage Cal/OSHA to look for opportunities to add information and provide supplementary information (as the GHS document describes it in several places) in its HCS that allows this and other improvements and retention of California’s current language.

6. Mixture percentages

Information about the ingredients in mixtures -- especially the contents -- is crucial to honest, transparent and effective RTK. We need as much information as possible and refer Cal/OSHA to Table 1.5.1 in the 4th edition of the GHS document (page 36) as a starting point. We might follow the example of the Canadians, who are trying to retain most protective cut-offs possible.

In particular, we worry about endocrine disruptors. The class of reproductive toxins has been shown to have effects at minute concentrations and to have a dose-response curve that forms a “U”, unlike the conventional straight line from less to more. They cannot be treated like other chemicals when it comes to cut-off points for hazard warnings, when a 0.1 percent cut-off does not offer protection.

7. Time to revise labels

It is unethical -- and illegal in some countries -- to delay providing new chemical hazard information to customers, workers, and the public. As history has told us, far too often, we have “late lessons from early warnings”. The cost is tremendous for all affected.

Labels and SDSs should be revised “promptly,” as the GHS says:

1.4.7.2.2 Updating should be carried out promptly on receipt of the information that necessitates the revision. The competent authority may choose to specify a time limit within which the information should be revised. This applies only to labels and SDS for products that are not subject to an approval mechanism such as pesticides. In pesticide labeling systems, where the label is part of the product approval mechanism, suppliers cannot update the supply label on their own initiative. However when the products are subject to the transport of dangerous goods requirements, the label used should be updated on receipt of the new information, as above.

1.4.7.2.3 Suppliers should also periodically review the information on which the label and safety data sheet for a substance or mixture is based, even if no new and significant information has been provided to them in respect of that substance or mixture. This will require e.g. a search of chemical hazard databases for new information. The competent authority may choose to specify a time (typically 3 – 5 years) from the date of original preparation, within which suppliers should review the labels and SDS information.

Finally, we will continue to watch and participate in this process, and to encourage our colleagues and allies to join us in supporting California workers and employers who want and need the effective, protective and prevention-oriented RTK regulation they deserve.

Please let us know about future consultations, meetings, and opportunities to participate and contribute to Cal/OSHA’s and the Standards Board’s deliberations about this very important issue. In the meantime, thank you for your consideration of our comments, and please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Green", with a long horizontal flourish extending to the right.

Kelly Green
Regulatory Policy Specialist

c.c. Christine Baker, Director, Department of Industrial Relations (cbaker@dir.ca.gov)
Ellen Widess, Chief, Cal/OSHA (ewidess@dir.ca.gov)