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Mike Horowitz
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Re: Globally Harmonized System (GHS) update to Section 5194, Hazard Communication

Dear Mr. Horowitz,

The UCLA Labor Occupational Safety and Health (LOSH) Program is submitting the following comments to Cal/OSHA regarding the proposed changes to the Hazard Communication Standard (8 CCR Section 5194), and related Title 8 Sections, that are intended to accommodate the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

The UCLA LOSH Program is a university-based organization providing outreach, education and other health and safety programs for labor unions, worker organizations, small businesses and others with limited access to health and safety resources. We specialize in Spanish language health and safety training and do significant work with the immigrant workforce in Los Angeles County, where access to health hazard information continues to be a challenge. We work closely with car wash workers, hotel housekeepers, janitors and salon workers to improve their understanding of chemical hazards, to train them in precautions to minimize their exposure, and also to empower them to advocate for safer substitutes.

Occupational illness resulting from chemical exposures, dubbed the silent killer, is responsible for more than 200,000 disabled workers and 40,000 premature deaths each year in the US. This is 10 times the number of fatalities from serious industrial accidents (such as refinery explosions or mine collapses) that receive widespread media attention. Occupational illnesses are responsible for hundreds of billions of dollars in medical expenses and lost productivity, of which nearly half is paid for by public programs such as Medicare and Medicaid. Our outdated occupational exposure limits cover only 6% of the chemicals used most heavily in industry today. In a recent New York Times article on this topic, federal OSHA Director David Michaels was quoted as saying: "I'm the first to admit this is broken. Meanwhile, tens of thousands of people end up on the gurney."

California's 1981 Hazard Communication standard, which followed in the wake of dibromochloropropane (DBCP) exposure and sterility among workers at the Occidental Chemical Plant in Lathrop, was the result of a long struggle to access and disseminate critical health hazard information to workers who handle chemicals. The standard that was written into Section 5194 became a model for Hazard Communication standards nationally, and is the first line of defense against workers exposure to chemical hazards. In the absence of specific chemical exposure limits or mandated exposure control requirements, it is also a much needed umbrella rule that covers many exposure scenarios where no specific regulatory language exists.

Despite the protective language of our state HazCom standard, safe chemical policy continues to be a challenge in California and nationwide. A recent regulatory initiative on Safe Alternatives Assessment, which lies under the jurisdiction the Cal-EPA DTSC, was aimed at addressing a portion of this gap, however it remains an unfunded mandate. This is why the principles of informing and protecting workers, the foundation of Section 5194, should be retained, and in fact expanded, rather than weakened by those adopted in the federal OSHA GHS standard. Adopting less protective standards, even if they are identical to those adopted by federal OSHA, would represent a step backward in reaching our collective goal to inform California workers about chemical hazards and in upholding the basic principle that workers have a "Right to Know" about the hazards in their workplace. Federal OSHA regulations set the minimum for protective standards, not the ceiling or maximum, and we encourage Cal/OSHA to maintain its status as a leader in worker protection.

Our specific comments and recommendations are focused on retaining the principle of ensuring accurate, timely and comprehensive information to workers:

1. Cal/OSHA should incorporate the principles of GHS into its existing HazCom standard

GHS is the result of more than 10 years of negotiations facilitated by the United Nations. We support the principles outlined in the international agreement, as set out in its fourth edition (the "purple book"), with which all the parties agreed. These principles 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;*
- (g) *the **comprehension of chemical hazard information**, by the target audience, e.g. workers, consumers and the general public **should be addressed**;*

The goal of adopting GHS should be to **improve** -- not reduce -- the level of protection for workers and to strengthen and improve classification and identification of chemical hazards. We do not support

“harmonization” at the expense of “protection” and recommend that the protective elements of the Standard are not weakened.

Given the language challenges of many immigrant workers, many aspects of a more globally harmonized system of hazards communication are welcomed. For instance, we support requiring consistent formats and the use of pictograms, standardized hazard statements, signal words, and precautionary statements in Safety Data Sheets on the federal and state level. Other improvements include covering a broader range of chemicals that are regulated in other programs (e.g., pharmaceuticals, pesticides, consumer products), and integrating information for transportation, workplaces, consumers and the environment, especially on safety data sheets (SDSs). These changes can greatly improve worker access to important information on the health effects of the products and chemicals they use on-the-job and the measures they can take to best protect themselves.

A. Source Lists

We recommend retaining the lists referred to and described in 8 CCR 5194 (d) (3) and (4) as proposed by Cal/OSHA, including the use of an updated Director’s List (the Hazardous Substances List in 8 CCR 339). These lists are consistent with the principles of the GHS and help to ensure consistency, accuracy, and quality in data sheets and labels. We are concerned that federal OSHA deleted important lists for classifying chemicals as health hazards, such as carcinogens. Reliance on the classification systems of well-respected and authoritative bodies such as the National toxicology Program (NTP) and the International Agency for Research on Cancer (IARC) leads to greater consistency and clarity in communicating chemical hazards; important goals of harmonization. Reliance on these existing classification systems provides needed validation for employers and workers who are making decisions about chemical selection and handling precautions.

Additionally, we recommend that Cal/OSHA incorporate more lists that cover the full range of hazard categories in the GHS (beyond carcinogenicity and reproductive effects). The proposed California Safer Consumer Product regulations uses a list of lists of toxic substances from authoritative bodies around the world in 22 CCR Section 69502.2. This comprehensive list should be incorporated, in addition to Prop 65, SIN2 used in Europe, and the European Union’s list of chemicals that cause skin irritation or sensitivities.

B. One Positive Study

We recommend retaining the reference to “one positive study” in sec 5194 (d)(2) and the definition of “health hazard” as proposed by Cal/OSHA. Determining statistical significance of toxicity studies using a weight of evidence approach opens a loophole and obstructs the necessary transparency of critical health hazard information. When it comes to protecting the health of workers, any erring should be on the side of precaution and more—not less—information, a principle that osat the heart of right-to-know laws and the Hazard Communication Standard in California.

C. No testing required

The federal statement in 29 CFR 1910.1200 (d)(2) and elsewhere that testing is not required in order to classify a chemical should not be adopted because it would make California's occupational safety and health regulations less effective than they are currently. If the no-duty-to-test statement is included, it would undermine Cal/OSHA's requirement that manufacturers and importers determine what is in a mixture, if they do not already know, a requirement that should be retained. We recommend that testing be conducted for physical and for health hazards, and to confirm that all ingredients are listed.

D. Mixtures

All ingredients should be declared, rather than active ingredients as required currently. Reproductive toxins, mutagens, and carcinogens should be declared at their lowest detectable levels, not at the arbitrary limit of 0.1%.

E. Label Revision

The requirement to revise labels within 3 months when a manufacturer or other entity becomes aware of information not currently reflected on a label should be retained. Federal OSHA extended the time limit to 6 months for revising labels when manufacturers become aware of significant information not currently reflected on those labels. Keeping the 3 month time limit for limits supports greater consistency in hazard communication. Additionally, we are unaware of any evidence supporting the necessity of extending the time limit. California should not follow suit with federal OSHA on this issue; should not go backwards in its protections for workers for the sake of adopting standards that are identical to those of the federal government.

F. Hazard Determination/Evaluation

We recommend retaining the wording 'hazard determination' currently found in 8 CCR 5194 (d) instead of *hazard classification*, and 'evaluate' instead of *classify*. The use of the phrase hazard determination strengthens the employer/manufacturer responsibility for hazard evaluation and assessment. This obligation is weakened in the revised language, which implies simply assigning a chemical class or hazard category. The limited regulatory requirements for exposure assessment and chemical hazard analysis necessitate the protection of the existing language for chemicals that have no specific guidance under other Title 8 regulations. A formal exposure assessment may be required if a chemical is listed in 8 CCR 5155 and has a published PEL, but for the vast majority of compounds that have no published PEL, the hazard determination language in 8 CCR 5194 (d) substantiates the employer requirement to assess the potential for hazardous exposures from chemicals.

G. Training

We recommend specifying additional detail about employer training requirements, including a requirement that training be provided at the time of employment and when new chemicals are introduced; and also specify when refresher training is required, how to evaluate its effectiveness, and that it be provided in the appropriate language.

Please feel free to contact me with any questions at ldelp@ucla.edu. Thank you for considering our comments and recommendations to ensure that workers receive the education needed to advance worker health and safety.

Sincerely,

A handwritten signature in cursive script that reads "Linda Delp". The signature is written in black ink on a light-colored background.

Linda Delp, PhD, MPH

Director, UCLA Labor Occupational Safety and Health Program

c.c. Christine Baker, Director, Department of Industrial Relations (cbaker@dir.ca.gov)
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