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## Comments to DOL

Comments on OSHA's  
Proposed Rule on Hazard Communication  
Docket No. H-022  
May 18, 1982

NIOSH fully supports the concept of hazard communication in the workplace, and believes that the transmittal of hazard information through labels, Material Safety Data Sheets (MSDS), and training are all essential to proper information transfer. NIOSH previously discussed these issues in its Criteria Document "An Identification System for Occupationally Hazardous Materials", and NIOSH stands by the recommendations contained therein.

NIOSH believes the Proposed Rule needs major alterations in several areas to adequately address the full range of worker hazard communication needs. These changes, along with the NIOSH position, are listed below.

Topic: Is the scope of applicability adequate to protect workers exposed to hazardous materials?

NIOSH believes that the scope of the Rule is too narrow. There are many other industry classes in which the potential for exposure to hazardous materials exists. These SIC's include:

Division C; Groups 15, 16, 17,

Construction Industry

Division I; Groups 75, 80, 82, 84

Service Industry, especially  
Automotive Repair, Hospitals,  
Vocational Schools

One of the many problems in limiting the Rule's coverage to SIC's 20-39 is caused by the common use of contract workers for construction and maintenance in the covered industries. If the Rule's coverage is not expanded, these workers will be uninformed of potential hazards.

Two situations are common: (1) the contractor's workers are present at a site where hazardous materials are usually present and are not informed or alerted to the fact; and (2) the contractor introduces hazardous materials to a site where none are usually present. In the first case the contract workers may be at risk from exposure to chemicals for which they have no training. Here labels and signs are most useful. The labels must contain enough information to inform the contract worker to beware of the hazard. This can be a problem in worksites where training of regular workers is relied upon for exposure prevention. The contractor's people will not receive the same training.

In the second case, the contractor's workers may know of the hazard but the regular workers will not. For example, drums can be left onsite or release procedures (such as spraying) used which can endanger the uninformed regular workers.

## NIOSH COMMENTS ON DOCKET NO. H-022

In the second case, the contractor's workers may know of the hazard but the regular workers will not. For example, drums can be left onsite or release procedures (such as spraying) used which can endanger the uninformed regular workers.

In both these cases, this standard relies on just the label for downstream worker information. The problem arises when either the contractor's workers or the worksite workers are not in the covered SIC code industries. Does this rule exempt them from protection? NIOSH strongly recommends expansion in the coverage of the Rule to all potentially exposed workers.

NIOSH is also concerned about the exemption of piping systems from the proposed standard. While labeling entire networks of piping should not be required, NIOSH believes filler ports should be labeled. This requirement is based on numerous incidents of substances being unloaded into the wrong filler ports. In addition, pipes dedicated to hazardous material transport should be identified to avoid accidental cutting and discharge of hazardous materials.

Topic: Is the concept of allowing evaluation of hazards by employers adequate?

NIOSH believes that allowing the employer to determine the hazards of workplace materials replaces scientific judgement with subjective judgement. The proposed rule places the entire burden of determining whether a hazard exists upon the employer, but fails to provide detailed guidelines or scientific criteria for making this determination. This is a severe shortcoming of the Rule that can lead to the following problems.

1. Inadequate determination -- Since no guidance is given as to the determination procedures and what constitutes an adequate determination, those employers covered by the Rule who lack experience with hazard determination or access to appropriate data will find it very difficult to perform the determination. Evaluation of hazards by non-experts who are given no guidelines can be expected to produce poor, erroneous, or conflicting determinations.
2. Variations in determination -- The literature abounds with conflicting data on simple parameters such as flash point. Even more troublesome is the lack of and poor quality of health hazard data. Given this, the lack of guidelines will produce widely varying analysis methods. An incomplete literature review can easily turn into a selective literature review in which only those studies favorable to the employers' position are included.

NIOSH COMMENTS ON DOCKET NO. H-022

3. Competition based on health data -- The above problems open the possibility of competition based on evaluation of health hazard. Products with less stringent hazard warnings would naturally be preferred. The lack of a common basis for determining hazards can produce wide variations in labeling, leading to false or misleading information on which to base the selection of products.

NIOSH believes that as a minimum, manufacturers should: (1) be required to include all chemicals listed in the NTP Annual Report on Carcinogens, ACGIH TLV's, NIOSH criteria documents, OSHA regulations, and their respective updates in a hazard communication system; and (2) evaluate data for chemicals they are using that do not appear on those lists and updates.

Topic: Is the determination of hazard involving the one percent cutoff appropriate?

NIOSH believes that the 1% limit is the best that can be proposed given the current state of toxicological knowledge.

Topic: Are laboratories adequately covered and/or exempted as proposed in the Rule?

NIOSH believes that laboratories involved in the covered industries should be included in the rule. Chemicals routinely used in research, analytical, clinical, diagnostic, and educational laboratories should not be exempt. Special provisions for minimal labeling of new compounds under development in the lab should be made since very little will be known about their potential hazards.

Topic: Are the definitions proposed adequate to cover the chemicals being regulated?

The definitions are adequate but limited. The covered industries must evaluate all health hazards but no definitions are given as to chronic hazards. OSHA has a Carcinogen Rule which is applicable to the proper evaluation of carcinogens but not to other chronic hazards. Other chronic hazards are treated in Appendix A, but not given the importance they require by inclusion in the definition section.

Topic: Is the exemption of importers consistent with the goal of worker protection?

NIOSH believes that the exemption of importers is contrary to the interests of hazard communication. This places an impossible burden on employers and employees who will find it impossible to determine the contents and degree

NIOSH COMMENTS ON DOCKET NO. H-022

of hazard of imported chemicals, encourages unscrupulous importation of unlabeled hazardous materials, and may give imported unlabeled chemicals a sales advantage over properly labeled domestic chemicals. Imported chemicals can have significantly different hazards than domestically produced equivalents because of process variations and contamination and require hazard identification.

Topic: Are the record keeping requirements for the list of hazardous chemicals adequate to meet the needs of chronic exposure or delayed-effect chemicals?

It has long been NIOSH's position that retention of records bearing on the health of workers is important. Lists of all chemicals used at a worksite should be kept for 30 years. This is a minimal requirement to allow identification of hazardous chemicals which can cause delayed-onset effects.

Topic: Should employers be required to submit or maintain a written plan of hazard communication programs?

NIOSH believes that a written plan for hazard communication is valuable. The written plan will establish the intent of the employer and will serve as the baseline against which future employer actions can be measured. In addition, implementation of the plan should be documented, for example, in a training record for each worker. It is pointed out that submission of a plan does not in itself guarantee effective hazard communication. However, obvious weaknesses in a plan could be quickly identified by OSHA and immediate corrective action taken. The final judgment of any plan can only be made based on performance as judged by an inspector touring the facilities.

Topic: Is the design of labels and placards adequately covered in the Rule?

NIOSH reaffirms its position on labeling as contained in the NIOSH Criteria Document "An Identification System for Occupationally Hazardous Materials." NIOSH is concerned with the potential lack of uniformity in design of and information contained on labels generated by various industries. Information transfer is inhibited if a worker is presented with multiple formats containing a wide variety of information on chemical hazards. It would be of considerable benefit to all who must work under this Rule if OSHA would specify a fixed format for all container labels.

NIOSH COMMENTS ON DOCKET NO. H-022

We agree on the placement of labels specified in the Rule with the exception of labeling for pipe outlets. Filling or dispensing outlets should be labeled to avoid the generation of hazardous mixtures resulting from lack of information about contents of piping systems. In addition, pipes dedicated to hazardous material transport should be identified to avoid accidental cutting and discharge of hazardous materials.

The problem of non-English-reading workers is not addressed in the Rule. NIOSH believes a numerical rating system as recommended in the Criteria Document will help alleviate this problem. Individual worksites may need foreign language labels or placards but this should be developed as part of the employer's hazard information plan.

Topic: Are the format and prescribed contents of the Material Safety Data Sheet adequate for workers' information needs?

NIOSH's experience-based on review and analysis of existing Material Safety Data Sheets is negative; a majority of MSDS lack information in many of the fields. The Rule allows blank fields to indicate that a search for information was undertaken without success. This is a defective requirement since OSHA does not supply criteria for defining an adequate search. The worker will see an MSDS with much of the information blank and assume no hazard exists when the fact may be that the blanks represent a poor search for information. NIOSH does endorse the concept of Material Safety Data Sheets and the proposed contents.

Topic: What is NIOSH's position on worker training programs and their scope and intent?

NIOSH believes that training programs are an important part of the hazard communication process. However, the training program specified in the proposed Rule is not adequately defined. The Rule could be followed by giving the worker a large packet of information with no oral instructions. Workers, especially new workers, might not be able to fully comprehend the material without guidance. There should be training exercises for all workers potentially exposed to hazardous materials. The Rule should specify minimum criteria for the instructors to ensure that information is imparted to workers by knowledgeable individuals. Details as to the training process should be specified in the Rule.

Topic: Are the Rule's provisions concerning release of trade secret information adequate to protect both workers' rights and suppliers' property?

NIOSH COMMENTS ON DOCKET NO. H-022

NIOSH recognizes the problems with disclosure of trade secret information. We have extensive experience in obtaining information on trade secret ingredients. We strongly urge OSHA to broaden the trade secret provision as follows:

- (1) Define what are carcinogens, mutagens, and teratogens for purposes of this Rule so that disclosure is made on an equal basis by all suppliers. Failure to so define will result in the confusion and inequities discussed above.
- (2) Provide for disclosure under secrecy agreements for all chemicals so that health professionals other than treating physicians have access. This is necessary to allow employers to adequately design the work place for the safety of workers.

Topic: How will conflicting responses to the requirements of the Rule be resolved?

Based on discussion of the topics listed above, it seems clear that the absence in the Proposed Rule of specific procedures and criteria to be followed in making a hazard determination will lead to conflicting determinations. NIOSH believes that no review procedures will overcome the lack of guidance and that the Rule, as now proposed will not provide the hazard communication to workers for which it was designed.