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NIOSH Comments to DOL

COMMENTS OF THE
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH
ON THE
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S
PROPOSED RULE ON
HAZARD COMMUNICATION

29 CFR Part 1910 et al.
Docket No. H-022D

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control
National Institute for Occupational Safety and Health

October 27, 1988

Introduction

The Occupational Safety and Health Administration's (OSHA's) request for comments and information on the final rule [53 CFR 29822] to modify its Hazard Communication Standard (HCS) [52 CFR 31852], has been reviewed by the National Institute for Occupational Safety and Health (NIOSH). The modified rule expanded coverage to all employees exposed to hazardous chemicals. OSHA is to be commended on the promulgation of the HCS and the extension of the coverage to those in non-manufacturing employments as well as manufacturing. NIOSH originally submitted comments on the original HCS to Docket H-022 dated 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. In response to OSHA's request, the following NIOSH comments are presented by the same paragraph heading as the standard.

Issues for Discussion

(a) PURPOSE

Not discussed by OSHA.

(b) SCOPE AND APPLICATION

1. Scope and Industries Covered

As previously presented in our comments on the original rule, NIOSH strongly supports the inclusion of all workers under the HCS. OSHA should continue to include coverage of even those industries where small businesses are prevalent, such as farming and cosmetology. NIOSH concurs with OSHA's view that the "extent of risk" or "size of employer" is not a determining factor with regard to a decision as to whether the information must be conveyed. Employees have the right to know when a potential for exposure exists and the chemical has been demonstrated to be hazardous. NIOSH suggests that the construction industry not be exempted from the standard or regulated under a separate standard. The issues faced in the construction industry are not unique and should be regulated under the HCS.

2. Consumer Products

As stated in the Federal Register Notice on page 46079, the Office of Management and Budget (OMB), for the HCS, has disapproved the "coverage of any consumer product that falls within the 'consumer products' exception included in Section 311(e)(3) of the Superfund Amendment and Reauthorization Act of 1986."

Consumer products that are used in an industrial setting may cause exposures beyond that anticipated by the labeling aimed at consumers. It is NIOSH's position that the Environmental Protection Agency (EPA) and OSHA "consumer products" are defined for different purposes and should not be summarily grouped together. MSDS labeling requirements and training provisions should be extended to certain hazardous "consumer products" that are being used in the workplace in quantities that may cause exposures that would not be anticipated if the materials were being used as "consumer products". For example, many paint thinners and paint removers available as "consumer products," contain organic solvents with toxic properties which could produce a hazard if used in large quantities and over an extended time period. The information reported for "consumer products" does not offer the type of information needed to prevent hazardous exposure if used as an industrial chemical when extended exposure times are likely.

3. Nuisance Dust

NIOSH made a limited evaluation of the literature on 48 substances that OSHA proposes to regulate as "nuisance dusts" in the proposed rule on air contaminants (Docket H-020). NIOSH concluded that the documentation cited by OSHA was inadequate to support the proposed permissible exposure limit (PEL) of 10 mg/m^3 for all "nuisance dust" to be applied to many of the substances. Recent toxicological and exposure data indicate that exposure to some of these substances may cause cancer or other serious health effects and that a lower PEL would seem to be indicated. NIOSH is therefore concerned that it is misleading to apply the term "nuisance dust" to such substances.

OSHA proposes to exempt "nuisance particulates" from coverage when evaluated in accordance with HCS hazard determination provisions, and when no evidence is found to indicate that the particulate presents any physical or health hazards other than possibly being a nuisance. This proposal does not seem unreasonable on the surface given the array of these substances in existence, the lack of definitive hazard data, and the need for flexibility. However, OSHA should provide definite guidelines on what constitutes "evidence" and OSHA should not exempt dusts which exhibit toxic effects when encountered in high concentrations. For example, picloram, a herbicide, is regulated at the "nuisance dust" level yet it has been shown to cause systemic effects such as liver and kidney damage.

4. Grain Dust

OSHA has correctly reaffirmed its position that grain dust is a hazard and is subject to the provision of the HCS.

(c) **DEFINITIONS**

NIOSH has no specific comments on this section of the HCS.

(d) **HAZARD DETERMINATION**

We reemphasize our previous remarks concerning NIOSH activities that would be useful as sources of information in determining hazards. NIOSH has transmitted 129 Criteria Documents and 50 Current Intelligence Bulletins (CIBs) to OSHA. NIOSH Criteria Documents and CIBs contain a great deal of information which would be useful in hazard determination. In particular, the NIOSH Criteria Document, An Identification System for Occupationally Hazardous Materials, presents a method of determining the relative hazard for chemicals which would be a useful guide for "hazard determination."

The present HCS rule identifies only the NTP Annual Report on Carcinogens, the OSHA permissible exposure limits, the International Agency for Research on Cancer (IARC) monographs, the Registry of Toxic Effects of Chemical Substances (RTECS), and the ACGIH Threshold Limit Values (TLVs) as sources for determining hazardous chemicals. Because NIOSH criteria documents and CIBs present a complete array of scientific information relating to hazard recognition, evaluation and control, we recommend that NIOSH criteria documents and CIBs be included in this list.

(e) **WRITTEN HAZARD COMMUNICATION PROGRAM**

1. Multi-employer worksite provision

In the Notice of Proposed Rulemaking (NPRM), OSHA reaffirms its view that a hazard communication program can only be effective at multi-employer worksites if MSDSs are available to all workers at the job site. At multiple employer sites (e.g., construction sites), OSHA indicates that employer(s) who use substances that are subject to the HCS should include details regarding information transfer mechanisms (including labeling systems and MSDSs) in the employer's written program. The provisions of the final standard allow for feasible employer options (such as a central MSDS repository on site) regarding information transfer mechanisms. NIOSH recommends that OSHA continue to affirm its aforementioned position regarding HCS requirements at multi-employer worksites, and not exempt certain employers from the requirements because of a small number of substances used or compliance difficulties as perceived by the employer.

Likewise, OSHA should argue against OMB's determination that the practical utility of MSDSs on multiple worksite locations "has not been demonstrated." OMB suggests that the detailed substance specific information on MSDS does not offer practical benefit in an

"uncontrolled" environment where the employer knows generally, but not specifically, what hazards his/her employees will face, or when, or where. Nonetheless, MSDS's are furnished for the protection of the worker who is entitled to have access to the MSDS for those hazards that are encountered.

In this connection, OMB suggests instead a scheme of labeling all containers brought onto multiple worksites, complemented by employee training for hazards that are likely to be introduced by other employers. MSDSs would be provided to "other" employers upon request. NIOSH suggests that the OMB consider the significant value of MSDS data for evaluating workplace hazards. Precisely because of the lack of hazard specificity on multiple worksites, employers and workers need specific MSDS information to enable them to identify particular hazards. The MSDS provides a 'base determination' of hazard potential and will enhance the employer's and worker's ability to identify hazardous chemicals.

(f) LABELS AND OTHER FORMS OF WARNINGS

NIOSH again emphasizes its concerns about the lack of uniformity in the design of, and information contained on, labels generated by various industries. Multiple formats containing a wide variety of information on chemical hazards will be very confusing to the worker. A more uniform approach as suggested in the NIOSH criteria document, An Identification System for Occupationally Hazardous Materials, or the draft ANSI Standard for Hazardous Industrial Chemicals - Precautionary Labeling, would be preferable.

(g) MATERIAL SAFETY DATA SHEETS

NIOSH points to the criteria document, An Identification System for Occupationally Hazardous Materials, as a guideline that would be useful in the development of a more uniform approach to the preparation of MSDSs. A major concern about the OSHA rule is the lack of detailed guidelines on scientific criteria for making the determination of whether a substance is hazardous. The often conflicting health effects information in the literature on occupational chemicals makes the process of hazard determination highly subjective. The source of information used for determining the degree of hazard could result in selective or biased interpretations of the scientific literature resulting in wide variations in the labels and MSDSs for identical products. A standardized method of preparation from a defined source of information would lead to better MSDSs.