



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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December 29, 2009

OSHA Docket Office  
Docket No. H-022K –2006-0062  
Room N2625  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**RE: Docket H-022K-2006-0062; Proposed Rule; Request for Comments**

Dear Sir or Madame:

The following are comments from the Independent Lubricant Manufacturers Association (“ILMA”) regarding the Occupational Safety and Health Administration’s (OSHA) Proposed Rulemaking on modifications to the Agency’s Hazard Communication Standard (“HCS”), 29 CFR 1910.1200, to implement the Globally Harmonized System of Classification and Labeling of Chemicals (“GHS”). 74 Fed. Reg. 50280 (Sept. 30, 2009).

Sincerely,

A handwritten signature in black ink that reads "Celeste Powers". The signature is written in a cursive, flowing style.

Celeste Powers, CAE  
Executive Director

Department of Labor )  
Occupational Safety and Health Administration )  
29 CFR Parts 1910, 1915 and 1926 )  
Docket No. OSHA-H022K-2006-0062 )  
RIN 1218-AC20 )  
Proposed Rule: Hazard Communication )

## **Comments of the Independent Lubricant Manufacturers Association**

### **I. Introduction of ILMA**

The Independent Lubricant Manufacturers Association (“ILMA”), established in 1948, is a national trade association of 135 manufacturing member companies. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. Many member companies export finished lubricants from the United States or have business arrangements for the use of their proprietary formulae overseas.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

ILMA members have been subject to the provisions of the Hazard Communication Standard, 29 C.F. R. Part 1910 (“HCS”), since its original promulgation by the Occupational Safety and Health Administration (“OSHA”). ILMA was involved with several OSHA interpretations of the HCS concerning base oils and waste oils.

ILMA is a proud member of OSHA’s Alliance Program.

### **II. The Proposed Rule Makes Material Improvements to the Hazard Communication Standard While Preserving Key Aspects**

In a global marketplace, it is necessary to harmonize hazard definitions between and among various countries. The time for a globally harmonized system of hazard communication is long overdue, and ILMA applauds OSHA’s efforts to revise the Hazard Communication Standard in this rulemaking to align it with the United Nations’ (“UN”) Globally Harmonized System of Classification and Labeling of Chemicals (“GHS”). ILMA is particularly pleased that OSHA did not completely revamp the GHS definitions, as the GHS definitions reflect a consensus scientific process on the review of

the hazards that chemicals can present and on the toxicology data that predict the likelihood of hazard occurring. OSHA's prudent approach should lead to a great deal of harmonization on the classification of chemical substances, especially between the European Union ("EU") and the United States.

While the hazard criteria in the original HCS were reasonable in the context of hazard communication knowledge that existed in 1985, like all good ideas with strong scientific underpinnings, refinement of the regulations after more than two decades of experience should be expected and welcomed by all stakeholders.

#### *Deletion of Hazard Classification List References*

ILMA enthusiastically supports OSHA's decision to delete references to any lists in the hazard classification provisions being proposed. 74 Fed. Reg. 50280 at 50396 (Sept. 30, 2009). In addition to assuring greater consistency with the GHS (and recognizing that these lists are not necessary under GHS), this decision by the Agency ameliorates a longstanding problem with the current regulations – that is, the incorporation by reference (and thus implicit approval by the Government) of non-consensus standards, such as the Threshold Limit Values ("TLVs") developed by the American Conference of Governmental Industrial Hygienists ("ACGIH").<sup>1</sup>

#### *OSHA's Build Block Approach*

As important as it is to harmonize the existing HCS regulations with the GHS through this rulemaking, ILMA appreciates OSHA's "building block approach" to the proposed rule (discussed at 74 Fed. Reg. 50280 at 50287). For example, ILMA agrees that trade secret provisions should not be changed in material ways and that trade secret protections have different national legal protections. While OSHA is correct that many manufacturers with global businesses will likely disclose more information than required because of more severe disclosure requirements in other countries, trade secret protections should remain in effect to ensure the competitiveness of small businesses, including some ILMA members, which sell products only in the United States.

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<sup>1</sup> TLVs are developed by way of ACGIH committees that operate in secret with *anonymous* authors. Though the opportunity to provide written comments exists, there is no "appeal" process to challenge, question or even engage in a professional discourse with the people responsible for developing and finalizing the TLVs. ILMA believes that because the TLV development process is closed, TLVs have compromised scientific value and limited utility in addressing occupational health and safety matters. Indeed, this non-consensus process can generate defective decisions that have the potential to compromise the health and safety of the very workers the TLVs are designed to help. In addition to issues of transparency and fairness, TLVs are developed without any regard to the economic and technical feasibility of its recommendations or the availability of acceptable methods to determine compliance.

ACGIH itself acknowledges that TLVs are not intended to be standards. The group says that TLVs are "guidelines designed for use by industrial hygienists in making decisions regarding safe levels of exposure to various chemical substances and physical agents found in the workplace." Thus, TLVs are only one of a number of factors to be considered when evaluating workplace conditions.

In addition, ILMA supports how OSHA in the proposed rule maintains the *status quo* regarding defining “unclassified hazards” in a manner that assures flexibility to address unique or special hazards.

#### *OSHA’s Hazard Category Selections*

ILMA supports the proposal by OSHA to include all hazard categories in the GHS except Acute Toxicity Category 5 for oral, dermal, or inhalation exposures; Skin Corrosion/Irritation Category 3; and Aspiration Hazard Category 2. These three categories are not necessary to provide a level of protection consistent with the current HCS.

ILMA also supports the adoption of the multiple hazard categories within hazard classes. Eye irritation is a good example. There is a vast difference between the old European Union Risk Phrase 36 (EU R36) and OSHA definitions of eye irritation to the point where the EU under protected workers and OSHA definition may have resulted in superfluous protections. The new categories 1, 2A and 2B add much clarity to the rule. ILMA notes that the description of category 2B seems to have been inadvertently omitted in Appendix A, so we have referred to the GHS “Purple Book” for the definition of 2B (UN, 2007, Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Second Revision Part 3 Health Hazards, Table 3.3.2). ILMA supports the statements required for eye hazard in Appendix C, especially the requirement for Category 1 to get medical help immediately and for Categories 2A and 2B to advise to get medical help if irritation persists. This is a sound differentiation for the wide range of severity of eye hazards and makes it easy to explain to workers in training classes.

ILMA supports the new hazard definitions for chronic hazards. We are especially supportive of the multiple hazard categories to communicate severity of these hazard classes. The GHS dose levels from toxicology studies are reasonable and do a credible job in differentiating potent toxicants from chemicals that present a weaker hazard.

### **III. Aspects of the Proposed Rule Need Further Improvement**

While ILMA believes that the proposed rule is generally on track to improve occupational safety and business efficiency (eventually), there are key parts of the proposed rule that can be further improved, including a better internationally harmonized Mixture Rule, Appendix D, and, most importantly, how to structure the Effective Date for the final rule so as to take into account the needs of “downstream” formulators and small business.

#### *Better Harmonizing the Mixture Rules*

The proposed rule contemplates major differences with the classification and labeling rule in the EU with regard to determining whether mixtures are considered hazardous. ILMA encourages OSHA to adopt the EU rules to provide a greater level of harmonization between these two major trading partners. For example, in the area of

organ toxicants, OSHA Table A.8.2 (74 Fed. Reg. 50280 at 50470) should be changed to use the cutoffs and triggers to Table 3.8.2 (page 118) in the EU rule.

The proposed rule differs with the EU rule and the GHS recommendations for virtually every chronic hazard category in proposed Appendix A. These differences run contrary to harmonization efforts and impact tens of thousands of mixture products sold both in the EU and the United States. ILMA further believes that Category 2 hazards, especially target organ hazards, should be subject to cutoffs recommended by the UN's GHS workgroup or the EU Classification, Labeling & Packaging ("CLP") instead of the proposed 1% cutoff (UN, 2007. Globally Harmonized System of Classification of Classification and Labeling of Chemicals (GHS), Second Revision Part 3 Health Hazards, Tables 3.8.2, 3.9.3). There are three aspects of the current regulations that essentially require businesses to "over-warn" about weak target organ hazards in occupational settings. These aspects include: (1) the "one positive study" standard; (2) the lack of guidance on dose in a toxicology study as related to potency of effects; and, (3) the 1% rule. While the proposed rule makes notable improvements regarding two of the "over warning" aspects by dropping the "one positive study" standard and adopting the GHS guidance on dosage, OSHA misses an excellent opportunity to completely address matter (and better harmonize with the EU CLP and the UN version of GHS) by deciding not to adopt the 1%/10% cutoffs for many hazard classes (and the 0.1%/1% cutoffs for carcinogenicity and reproductive toxicity). ILMA suggests that OSHA reconsider its decision regarding retaining the 1% rule.

#### *Comments Regarding Proposed Appendix D*

In the proposed rule, Appendix D indicates that the percent of ingredients in a mixture of unknown toxicity should be disclosed in the Safety Data Sheet ("SDS") (Table D.1 Item 2(d)). Although ILMA agrees with the intent of the requirement in that industry should use only chemicals that have been adequately tested so at least the acute hazards are known, the concept of "unknown toxicity" needs to be defined. Without a definition, the term "unknown toxicity" is subject to a variety of interpretations. Indeed, does the term mean that absolutely no tests have been done on the substance, or maybe just that the supplier of the substance did not cite toxicology data their SDS? A related question is the number and nature of studies required to be performed on a substance before its toxicity status changes from "unknown" to "known."

#### *Effective Date*

ILMA manufacturing members blend chemical substances into mixtures to create lubricant products. In order to comply with the proposed rule, they will rely heavily on revised hazard assessments made and communicated by their suppliers. The EU CLP regulation provided an additional three years for mixtures; by contrast, OSHA's proposed rule contemplates a blanket three year phase-in period. 74 Fed. Reg. 50280 at 50404. While this period may be generous for those businesses that manufacture or import substances, ILMA fears that a blanket effective date for everyone in the regulated community is unworkable.

Curiously, the proposed rule anticipates the desire of businesses downstream in the supply chain for a tiered effective date, “Requiring the phasing in of substances first, and then mixtures, clearly has some persuasive logic as an approach.” *Id.* Unfortunately, OSHA seems to be rather resistant to the idea:

However, the supply chain is not always orderly and logical. It cannot be assumed, for example, that no mixtures can be completed until all substances are done. Mixtures that are comprised of substances that are widely available, and their hazards are well known, do not need an extensive time period to complete. Some mixtures are comprised of other mixtures rather than substances, and producers of such mixtures will need information on the component mixtures before they can comply.

*Id.*

As a threshold matter, while not always orderly and logical, the supply chain as it relates to the independent lubricant industry is *mostly* orderly and logical. Although OSHA is correct in that some mixtures will be able to be completed before all substances, given the complexity and diversity of components necessary for modern lubricants, most lubricants cannot be classified until updated hazard classification information on all substances in the mixtures has been received from suppliers. The germane question is not whether *any* mixtures can be done, but rather what is reasonable approach for all (or at least most) mixtures.

After dismissing supply chain realities and justifying the blanket effective date with what is theoretically possible, OSHA appears confident that undefined market forces will prevent any SDS logjam:

Waiting till the end of an extensive time period to complete their work may not allow them to meet the compliance dates. These types of issues are generally addressed by the market, and the needs of a manufacturer’s customers, and cannot be individually addressed in a phasing-in period.

*Id.*

It is unclear to us which entities OSHA refers in this explanation – who exactly is the entity that is waiting until the end of the end of the effective date? To the extent that this entity is an upstream supplier, there is little a downstream supplier can do to force upstream compliance. While the prospect of losing business may encourage some upstream suppliers to complete their SDSs well in advance of the effective date, solely relying on market dynamics gives little solace to formulators that use hundreds of substances to manufacture hundreds (and in some cases thousands) of different products. Though OSHA should not use the proposed rule to “individually address” the needs of particular businesses, it most certainly can take into account the fact that not all businesses can pursue their regulatory compliance efforts immediately upon promulgation of the rule.

In addition, many small and medium-sized companies will find that their current methods of writing SDSs are inadequate under GHS. ILMA has encouraged members to be proactive and update their systems with new software systems that have incorporated a GHS module. Given the current economic climate, many small to medium-sized companies have avoided capital expenditures to survive the recent economic recession. These companies will need more time to plan their business recovery and their needs for systems upgrades to comply with the rule when it is promulgated.

To give greater context and a sense of scale to ILMA's contention that a tiered effective date is necessary, the Association surveyed seven of its manufacturing member companies on the time they need to comply with the proposed rule when finalized. The results of the survey are set forth in Attachment 1.

None of the seven companies manufacture any substances -- they all blend purchased substances into mixtures. All seven companies agreed that more time for compliance is needed for companies whose products are mixtures due to the fact that the revised hazard classifications for the substances need to be obtained from suppliers. The seven companies estimated that between 33 and 72 months would be needed to fully comply with the rule. All seven companies indicate that compliance with GHS will require a capital projects to upgrade their SDS authoring software. The companies sell between 150 and 3700 different products and use between 150 and 2400 different purchased chemicals in these products. Complying with a rule as complex as proposed will take small and medium-sized companies a great deal of time and effort.

The companies identified the major tasks associated with complying with a rule would be:

1. Evaluate final rule and determine needs for compliance;
2. Evaluate SDS Authoring Software;
3. Approval of capital expenditure;
4. Load SDS software and get it to work;
5. Load hazard evaluations of purchased chemicals;
6. Load product formulas;
7. Create and edit SDSs and Labels; and
8. Send SDSs to Customers.

OSHA appears amenable to a tiered effective date on the basis of product type. *Id.* Although lubricants seem to be an excellent candidate for a tiered effective date, a better approach would be simply to follow the EU CLP and to extend the effective date for mixtures at least another three years.

*Compliance Costs are Underestimated and Warrant Significant Additional Study*

ILMA members are primarily concerned with the costs associated with compiling and authoring SDSs. In the proposed rule, OSHA estimates that the annualized (over a 20-year period) compliance cost of reclassification and revision of SDSs and labels to be

\$206,941 for NAICS Code 324191 – Petroleum lubricating oil & grease manufacturing.<sup>2</sup> *Id.* at 50326. This figure appears to be rather low, and it is conceivably an order of magnitude lower than it should be.

As we understand OSHA’s analysis, it will generally cost businesses somewhere between \$329 and \$200 per SDS, with larger businesses paying less per SDS due to efficiencies of scale and access to customized compliance software. *Id.* at 50334. The average number of lubricant products produced by the seven companies from the ILMA survey is 1700. Using OSHA’s calculus and assuming one SDS per product, the companies represented in the ILMA survey will incur costs in the range of \$340,000 to \$559,000 (\$329 or \$200 multiplied by 1700). If this range is annualized<sup>3</sup> over a 20-year period, the range is \$28,000 to \$46,000 per company. Given that there are 135 manufacturing members in ILMA, the annualized collective SDS compliance cost for ILMA manufacturing members appears to be in the range of \$3.7M to \$6.2M. This is substantially different than the total annualized cost of \$206,941 for the entire NAICS code as estimated by OSHA. Furthermore, although ILMA members represent a significant part of the lubricants industry, there are numerous non-ILMA companies; the real costs to the lubricants industry are likely even higher.

ILMA’s membership is composed primarily of small businesses. The proposed rule summarizes OSHA’s criteria for determining whether there are significant economic impacts on a substantial number of small firms as whether “the annualized costs as a percentage of revenues do not exceed 1 percent and that the annualized costs as a percentage of profits do not exceed 5 percent.” *Id.* at 50356. The proposed rule notes that for NAICS Code 324191 – Petroleum lubricating oil & grease manufacturing, these figures are 0.0040% and 0.0691%, respectively. *Id.* at 50348. Given the above analysis and our belief that the SDS compliance costs are grossly underestimated, we have little confidence in figures OSHA relies on to determine whether this rulemaking impacts small firms in a significant manner. More analysis on this matter is plainly required.<sup>4</sup>

For a more anecdotal treatment of the cost issue, consider some reflections on costs from two ILMA members. One member indicated costs will be “very high due to length of time to implement changes on (M)SDS software- at a minimum estimate over \$200,000 in the first year and a maintenance and continued costs of \$1,000 for each SDS as new ones are needed, this is conservative in estimates.” The member indicated that it is a small family-owned company and compliance with the new rule will be a great burden on personnel. A second member estimated costs at approximately \$50,000 for software and \$300,000 for staff time.

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<sup>2</sup> ILMA questions the 20-year amortization of costs from the implementation of GHS under the HCS. Independent lubricant manufacturers cannot depreciate for tax purposes the cost of software upgrades over 20 years. Moreover, to the extent that ILMA members have to obtain bank loans for the purchases of software upgrades, such loans have to be repaid in five years or less. OSHA’s cost analysis does not square with reality when it comes to small business’ compliance with the final rule when promulgated.

<sup>3</sup> Using the 0.082573 figure OSHA specifies in Footnote #14. 74 Fed. Reg. 50280 at 50335.

<sup>4</sup> ILMA supports the comments submitted by the Small Business Administration’s Office of Advocacy.

#### **IV. Conclusion**

At the macro level, OSHA is on the right track with the proposed rule – it improves the Hazard Communication Standard and will (in the long run) be good for business. However, there are avenues for improvement. We strongly believe that OSHA should implement a tiered effective date. ILMA also fears that OSHA greatly underestimated the compliance costs of the proposed rule and its impact on small business. We recognize that due to the nature of our industry (relatively small firms manufacturing a great number of very complicated mixture products that are downstream in the supply chain); some of the compliance challenges will be amplified for the Association’s members. However, the changes and additional analysis that we recommend will render benefits well beyond our particular industry.

ILMA appreciates this opportunity to comment, and it is prepared to address any questions this submission may have raised.

**Attachment #1**  
**OSHA GHS Implementation Questionnaire for ILMA Members<sup>5</sup>**

*Question #1:*

*Please complete the following timeline for compliance with the OSHA proposed GHS rule using “month zero” as the start of the project:*

Task	Company 1		Company 2		Company 3		Company 4	
	Task Start	Task End	Task Start	Task End	Task Start	Task End	Task Start	Task End
Evaluate final rule and determine needs for compliance	0	6	0	6	0	6	0	6
Evaluate MSDS Authoring Software	0	9	3	9	0	24	0	6
Approval of capital expenditure	9	12	9	12	24	30	6	8
Load MSDS software and get it to work	15	21	12	18	30	36	8	18
Load hazard evaluations of purchased chemicals	18	48	18	42	36	48	18	21
Load product formulas	24	36	18	42	48	60	21	24
Create and edit MSDSs and Labels	48	60	42	66	60	72	24	27
Send MSDSs to Customers	60	66	66	72	72	96	27	33

Task	Company 5		Company 6		Company 7	
	Task Start	Task End	Task Start	Task End	Task Start	Task End
Evaluate final rule and determine needs for compliance	0	6	0	6	0	6
Evaluate MSDS Authoring Software	0	6	0	9	0	9
Approval of capital expenditure	6	8	9	12	9	12
Load MSDS software and get it to work	8	10	15	24	15	18
Load hazard evaluations of purchased chemicals	10	20	24	51	18	48
Load product formulas	20	30	24	48	24	36
Create and edit MSDSs and Labels	30	48	48	60	48	60
Send MSDSs to Customers	48	54	60	63	60	63

<sup>5</sup> The Survey was administered 11-09 through 12-09.

Question #2:

Please complete the following to define the scope and burden of the project for your company:

	<b>Company 1</b>	<b>Company 2</b>	<b>Company 3</b>	<b>Company 4</b>
<b>Number of purchased chemicals blended into products</b>	>500	155	225	491
<b>Number of products</b>	>600	151	3700	1616
<b>Formula file line items<sup>6</sup></b>	> 6000	1500	15,000	8080
<b>Number of domestic customers</b>	No response	9,582	4765	893
<b>Number of international customers</b>	No response	1,870	150	10
<b>Name countries in which products are sold where GHS regulations are also going into effect</b>	USA, Mexico, Canada, South America, and possibly the EU	Products sold throughout North America, Europe, Asia <sup>7</sup>	Spain, Germany, Poland, Canada, Mexico, China	US, Canada, Mexico, UK, Ireland, India, Taiwan, China

	<b>Company 5</b>	<b>Company 6</b>	<b>Company 7</b>
<b>Number of purchased chemicals blended into products</b>	800	2,400	200
<b>Number of products</b>	2000	3,000	1000
<b>Formula file line items</b>	8000	30,000	6000
<b>Number of domestic customers</b>	1500	350	800
<b>Number of international customers</b>	50	25	10
<b>Name countries in which products are sold where GHS regulations are also going into effect</b>	No response	United States & Canada	China, Mexico, Canada

<sup>6</sup> This term refers to the number of products multiplied by the average number of components per products.

<sup>7</sup> Including but not limited to Canada, Turkey, U.K., Italy, Japan, China, and Singapore.