

CONSTRUCTION INDUSTRY SAFETY COALITION

May 19, 2021

OSHA Docket Office
Docket Number OSHA-2019-0001
Room N-3508
Department of Labor
200 Constitution Avenue, NW
Washington, DC, 20001

Re: Docket No. OSHA-2019-0001 Hazard Communication Standard; Proposed Rule

Dear Docket Clerk:

On behalf of the Construction Industry Safety Coalition (“CISC” or the “Coalition”), we are pleased to submit these comments to the Occupational Safety and Health Administration (“OSHA”) regarding its proposed rule to amend the Hazard Communication Standard (“HCS”), codified at 29 C.F.R. § 1910.1200. We thank OSHA in advance for its consideration of these comments.

A. Background on the CISC

The CISC is comprised of 30 trade associations representing virtually every aspect of the construction industry. The CISC was formed several years ago to provide data and information to OSHA on regulatory, interpretive, and policy initiatives. The CISC speaks for small, medium, and large contractors, general contractors, subcontractors, and union contractors alike. The CISC represents all sectors of the construction industry, including commercial building, heavy industrial production, home building, road repair, specialty trade contractors, construction equipment manufacturers, and material suppliers. CISC members generally are not manufacturers of chemicals, but members transport or use chemicals manufactured by others.

B. CISC Comments on OSHA’s Hazard Communication Standard; Proposed Rule

In general, the CISC supports OSHA’s adoption of the United Nations’ Globally Harmonized System of Classification of Labeling of Chemicals (“GHS”) (i.e., a system that provides a common, coherent approach to classifying and communicating chemical hazards, such that there is quality and consistency of information provided to employers and employees regarding chemical hazards and protective measures needed). However, the CISC is concerned with the familiarization, training, and compliance costs imposed on the construction industry by continuous updates to OSHA’s HCS. The CISC has particular concerns regarding the costs to small businesses, which are common within the construction industry. Even though such businesses are generally only end users of these chemicals, they still incur regulatory costs associated with updates to the HCS. While OSHA’s proposal acknowledges costs to downstream employers as a whole, and specific costs to employers within certain industries, as set forth below the costs do not reflect the actual resources needed for compliance by employers and the proposal omits *any* estimated costs for the construction industry.

1. Continuous updates to OSHA's HCS Creates Challenges with and Increases the Costs of Compliance for Small Contractors.

While the CISC appreciates OSHA's overall recognition of the costs of compliance for affected employers, we respectfully disagree that OSHA's analysis captures all of those costs. Upon adoption of an update to the HCS, construction industry employers will incur costs in the following categories: 1) management familiarization and other management-related costs; and 2) costs associated with training employees. Even though construction industry employers generally do not manufacture chemicals, as end users of these products employers in the construction industry will need to read, understand, and familiarize themselves with the updated HCS; make appropriate changes to hazard communication programs; revise training programs and provide new training to employees on information contained on warning labels. While we appreciate that the basic framework will stay the same under the updated HCS, significant costs go into familiarization, training, and compliance efforts for any change, no matter how minor.

OSHA underestimates the costs associated with management familiarization with its updated proposal. For non-chemical manufacturers, OSHA estimates that large, medium, and small establishments will require only 4 hours, 1 hour, and .25 hours, respectively, for management familiarization. These costs are too low. The assumption that familiarization time will be significantly lower for small entities is particularly flawed. Because small entities are less likely to employ a safety and health specialist, familiarization will be even *more* time consuming for these businesses. Approximately 80 percent of CISC member companies are small businesses as defined by the Small Business Administration.

Furthermore, ongoing updates to the HCS make it difficult for small businesses to keep track of current standards. Each update has a significant impact on small businesses, and particularly on small construction contractors, who may use any number of chemicals manufactured by others at their job sites. These employers are additionally concerned by any language in the proposal that may result in costs for downstream users associated with chemical reclassification resulting from mixtures created from commonly used chemicals on jobsites.

2. OSHA's Proposed Rule Ignores the Costs to the Construction Industry.

Despite what would appear to be obvious coverage of construction by any final rule, OSHA's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis falls short of acknowledging the proposal's economic impact and costs of compliance on the construction industry and construction employers. For example, Section VII.C provides a profile of industries affected by OSHA's proposal, based on North American Industry Classification System ("NAICS") classifications. OSHA notes that its profile of affected industries is based on the final economic analysis in its 2012 HCS final rule, but does not otherwise address how it determined which industries would be affected by its proposal. OSHA identifies NAICS codes covering manufacturing, mining, merchants, and trade industries, but not a single NAICS code for the construction industry (Sector 23—Construction) is identified or considered as "affected." Each remaining section of the preliminary economic analysis is based on this profile of affected industries, and each, in turn, fails to acknowledge or assess the economic impacts and costs of this proposal to the construction industry.

It is important that OSHA recognize the full impact of its proposal, including its reach in the construction industry, and provide significant compliance assistance to construction companies. Alternatively, the CISC requests that OSHA clarify that a final rule would not impact construction and construction contractors would not be obligated to change their written hazard communication programs accordingly.

C. Conclusion

While the CISC appreciates OSHA's work to align its HCS with the continuously updated GHS, the Coalition is concerned that OSHA underestimates the costs of familiarization, training, and compliance with the updated standard, particularly for small employers in the construction industry. The CISC has further concerns that, while acknowledging that all employers will incur some costs, OSHA does not address specific costs to the construction industry.

The CISC appreciates the opportunity to comment on this proposal.

Sincerely,

American Road & Transportation Builders Association
American Society of Concrete Contractors
American Subcontractors Association
Associated Builders and Contractors
Associated General Contractors
Association of Equipment Manufacturers
Association of the Wall and Ceiling Industry
Concrete Sawing & Drilling Association
Construction & Demolition Recycling Association
Distribution Contractors Association
Independent Electrical Contractors
Interlocking Concrete Pavement Institute
International Council of Employers of Bricklayers & Allied Craftworkers
Leading Builders of America
Mason Contractors Association of America
Mechanical Contractors Association of America
National Association of Home Builders of the United States
National Association of the Remodeling Industry
National Demolition Association
National Electrical Contractors Association
National Roofing Contractors Association
National Utility Contractors Association
Natural Stone Council
Natural Stone Institute
Sheet Metal and Air Conditioning Contractor's National Association
Specialized Carriers & Rigging Association
The Association of Union Constructors
Tile Roofing Industry Alliance

cc: James “Jim” Frederick, Acting Assistant Secretary, OSHA
Maureen Ruskin, Acting Director, Directorate of Standards and Guidance, OSHA