



Independent Lubricant Manufacturers Association

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March 18, 2015

Honorable David Michaels
Assistant Secretary of Labor for Safety & Health
Occupational Safety & Health Administration
200 Constitution Avenue, N.W., Room S2315
Washington, D.C. 20210

Re: HCS 2012 Compliance Concerns

Dear Dr. Michaels:

The Independent Lubricant Manufacturers Association (“ILMA”) has continuing concerns with issues related to compliance with the June 1, 2015 deadline under the Occupational Safety and Health Administration’s (“OSHA”) Hazard Communication Standard (“HCS 2012”). As set forth in more detail below, ILMA requests that OSHA author further enforcement guidance that is specifically applicable to end-user employers.

In your October 31, 2014 letters to the American Coatings Association (“ACA”) and other trade associations, OSHA recognized the difficulties downstream manufacturers – that is, product and mixture formulators – and importers were and continue to face in obtaining the information necessary to author new Safety Data Sheets (“SDSs”) and container labels by the June 1, 2015 compliance deadline¹. OSHA’s remedy was to provide enforcement discretion in those cases where downstream manufacturers and importers can demonstrate their “reasonable diligence” and “good faith efforts” to obtain the required information to avoid citations from OSHA’s Certified Safety & Health Officials (“CSHOs”).

ILMA, ACA and the other associations sought additional clarification from OSHA on “reasonable diligence” and “good faith efforts” in their November 13, 2014 letter to you. OSHA responded to the groups’ clarification request with its February 9, 2015 enforcement guidance memorandum to its Regional Administrators and CSHOs (“February 9 Memo”).

In its February 9 Memo, OSHA set forth detailed information on what it considers to be “reasonable diligence” and “good faith efforts” by downstream manufacturers – again, product or mixture formulators – and importers who are unable to produce HCS 2012-complaint SDSs and container labels by the

¹ In its preamble to the final HCS 2012 rule, OSHA estimates that ILMA members and others in the lubricants manufacturing industry account for 40 percent of the new SDS to be authored by June 1, 2015, as well as 20 percent of the overall compliance costs.

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compliance deadline due to circumstances beyond their control. While ILMA and its members appreciate OSHA's efforts, there remains a significant issue – namely, OSHA did not provide any enforcement discretion for those end-user employers who purchase products from manufacturers or importers covered by the February 9 Memo. The only discussion of the issue for end-user employers is found in the last question in the Question and Answer attachment to the February 9 Memo.

Following the public release of the February 9 Memo, many ILMA members contacted their end-user customers and reviewed OSHA's statement on enforcement discretion. These end-user employers were quick to point out that they do not believe they are covered by the February 9 Memo and, therefore, they must be fully compliant by the June 1, 2015 deadline. Based on their reading of the February 9 Memo, a number of these end-user customers have told ILMA members (including in writing) that their failure to provide HCS 2012-compliant SDSs and container labels by June 1, 2015 could result in any or all of the following: rejection of shipments; alternate sourcing of products; reimbursement for any regulatory penalties incurred; and, other penalties as necessary for the end-user customer to maintain compliance under its safety and health programs.² In numerous applications, alternate sourcing of products is not feasible because of customer and third-party specifications and approval processes. Accordingly, without further clarification for end-user employers at the end of the "communication chain," ILMA members and other manufacturers will be put in an untenable position without the necessary classification information from their upstream raw material suppliers.

ILMA requests that OSHA clarify as quickly as possible the enforcement posture for an end-user employer that is dependent on a manufacturer or importer that has not received the necessary classification information from its upstream raw material suppliers in time to author HCS 2012-compliant SDSs and container labels and who fall within the framework of the February 9 Memo. ILMA proposes congruent language to that found in the February 9 Memo – that is, "CSHOs shall not cite an end-user employer for failure to have HCS 2012-complaint SDSs and container labels available in its facilities if the employer exercised good faith and reasonable diligence in attempting to obtain the SDSs and labels from its suppliers."

ILMA further suggests that end-user employers can demonstrate "good faith efforts" and "reasonable diligence" by documenting their attempts to obtain HCS 2012-complaint SDSs and container labels from their vendors. For example, in a clarification from OSHA, the Agency could provide a "form letter" that the manufacturer or importer could provide to end-user customers, explaining why the new SDSs and labels are not available and providing a reasonable approximation of when the HCS 2012-compliant materials will be delivered. End-user employers

² In a number of instances, the purchasing departments for end-user customers of ILMA members are asking for HCS 2012-compliant SDSs and container labels in advance of OSHA's regulatory deadline.

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could then provide those letters to CSHOs as evidence of their “good faith efforts” and “reasonable diligence.”

ILMA also would like to update OSHA on its members HCS 2012 compliance activities. ILMA recently surveyed its manufacturing members, eliciting a 30 percent response, on three questions related to the status of their compliance with the June 1, 2015 deadline. As of January 1, 2015, the survey respondents received 37% (median 25%) of their expected number of HCS 2012-compliant SDSs from upstream raw material suppliers. These respondents have converted an average of 34% (median 15%) of their product line to HCS 2012-complaint SDS and labels. Compliance has also come at a considerable cost to ILMA members, mostly small businesses. Survey participants report that they have spent, on average, over \$99,000 (median \$45,000) on compliance efforts, with a number of companies already having spent over \$200,000.

ILMA appreciates OSHA’s prompt consideration of its request.

Sincerely,



Martha Jolkovski
Acting Executive Director

cc: Maureen Ruskin
ILMA Board of Directors
John Howell, Ph.D
Jeffrey L. Leiter, Esq.
Daniel T. Bryant, Esq.