



November 13, 2006

VIA ELECTRONIC SUBMISSION

OSHA Docket Office
Docket No. H-022K, Room N2625
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Re: Docket H-022K, Hazard Communication

Dear Madam or Sir:

The North American Metals Council (“NAMC”) appreciates the opportunity to provide comments on OSHA’s Advance Notice of Proposed Rulemaking on Hazard Communication, published in the Federal Register at 71 Fed. Reg. 53617 (Sept. 12, 2006). The proposed rulemaking relates to implementation of the Globally Harmonized System of Classification and Labeling of Chemicals (“GHS”). NAMC is an unincorporated not-for-profit group of metals-producing and metals-using associations and companies that focuses on science and policy matters that affect metals in a generic way.

Many of NAMC’s members ship their products internationally and recognize the desirability of a globally harmonized approach to the classification and labeling of chemicals. At the same time, NAMC is aware of the potentially high administrative burdens that could be involved in adapting OSHA’s Hazard Communication Standard to the full GHS regime, and some of our members have expressed concerns about costs (including costs incurred by small businesses), and issues of timing. Accordingly, NAMC urges OSHA to adopt a set of requirements that will allow for uniform international classification and labeling, with additional elements permitted on a voluntary basis. NAMC also supports a phased timing approach, with an extended compliance schedule for conversion to GHS requirements for small businesses or sectors that require more time.

The metals industry notes the importance of recognizing the unique physical, chemical, and biological properties of metals and metal compounds in the classification process. The bioavailability of metals compounds depends on chemical state as well as physical form, and must be taken into account for accurate classification. Factors such as potency, route of exposure, and species sensitivity differences are also critical in evaluating the potential hazards and risks of metal compounds, particularly in terms of classifications involving carcinogenicity, mutagenicity, and reproductive toxicity. Further, as the Hazard Communication Standard

already recognizes, *see* 29 C.F.R. §1910.1200(d)(5)(i), a sound classification system must allow for the hazard evaluation/classification of alloys to be made independently of the hazard evaluations of their constituent elements, since the hazard properties of an alloy may differ significantly from those of its constituents.

There is one last point that NAMC urges OSHA to consider when it proposes GHS-related changes to the Hazard Communication Standard. Currently subsection 1910.1200(g)(2)(vi) of the Standard requires that a Material Safety Data Sheet ("MSDS") show the ACGIH Threshold Limit Value ("TLV") for the substance in addition to the OSHA permissible exposure limit. NAMC believes that inclusion of the TLV on an MSDS should be eliminated as a mandatory requirement and left to the discretion of the chemical manufacturer to include as supplemental information where it would be appropriate. Requiring that TLVs be reported on an MSDS leaves the impression that they have the status of quasi-governmental exposure limits, which is not the case. As ACGIH unequivocally states, TLVs "are not developed for use as legal standards"; "are not designed to be used as standards"; and are not advocated for "use as such." *See* ACGIH 2006 TLVs® and BEIs® Policy Statement on Inside cover & v. There are good reasons for this. Among them are the facts that TLVs "are not consensus standards," (*id.* at v); and that, in developing them, "no consideration [is] given to economic or technical feasibility." *Id.* at vi. Moreover, the process by which TLVs are developed leaves much to be desired even in terms of health-related determinations. TLVs are developed by a group of individuals who are selected without public input or governmental oversight, who operate without the transparency and public participation that is required when government agencies engage in regulatory activities, and who reach their decisions without articulating and applying an objective set of risk assessment or other evaluative criteria. In effect, TLVs (as the ACGIH acknowledges) are simply "an expression of scientific opinion," *id.* at vii. Since users of MSDSs may fail to appreciate these points, the inclusion of a TLV on an MSDS can be misleading and should not be required under the Hazard Communication Standard.

If you have any questions, please contact me at 801-558-0222 or NAMC's counsel, Jane Luxton and Khouane Ditthavong of King & Spalding LLP, at 202-626-2627 and 202-626-5546, respectively.

Respectfully submitted,

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North American Metals Council