

June 15, 2015

Thomas Galassi  
Director, Directorate of Enforcement Programs  
U.S. Dept. of Labor, OSHA  
200 Constitution Avenue, N.W., Room N-3119  
Washington, D.C. 20210

Dear Director Galassi,

The Fertilizer Institute<sup>1</sup> (TFI), Agricultural Retailers Association<sup>2</sup> (ARA), and Responsible Industry for a Sound Environment<sup>3</sup> (RISE) represent fertilizer manufacturers, transporters, and retailers. As we have now arrived at, the implementation of the Hazard Communication Standard (“HCS”) of 2012, found at 29 CFR 1910.1200 there are many questions that have arisen related to these new regulations. Our members operate in a way that ensures the safety of their employees and customers and in compliance with all relevant federal regulations. However, the HCS of 2012 has created confusion in the industry. We seek your formal clarification of the questions below to ensure that our members and others within the industry are properly interpreting the Occupational Health and Safety Administration’s intent of the HCS 2012.

Fertilizer producers mine and manufacture plant nutrients such as nitrogen, phosphorus, and potassium, along with various micro-nutrients. From the manufacturer, these nutrients are moved through a complex distribution network that includes transportation in bulk to retailers via truck or rail.

Agricultural retailers do not consider themselves manufacturers, and indeed, they only resell fertilizers to farmers. In most cases, retailers provide their farmer customers with “custom blends,” comprised of multiple nutrients that bridge the gap between soil nutrient levels and nutritional requirements of specific crops. Agricultural retailers vary in size and complexity. It is estimated that there are roughly 6,000-9,000 agricultural retail facilities in the United States.

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<sup>1</sup> TFI represents the nation’s fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI’s members provide nutrients that nourish the nation’s crops, helping to ensure a stable and reliable food supply. TFI’s full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic, information, and public communications programs.

<sup>2</sup> ARA is a not-for-profit trade association that represents America’s agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

<sup>3</sup> RISE is a national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.

Most of these will have fewer than 10 employees, and many of them have fewer than five employees.

The custom fertilizer blends prepared by agricultural retailers are either dry bulk blends or blends of nutrients in aqueous solutions. In either case, no chemical reaction takes place when a blend is prepared, in fact, for the dry bulk blends, it would be possible to separate the individual components back to their original state.

Because each of these blends are designed to meet the specific agronomic needs of an individual farmer's agricultural operations, which may be comprised of a number of separate fields with different soil types, the blends can vary significantly in their components and nutrient content. The fertilizer industry utilizes 4R nutrient stewardship, putting the right source of fertilizer, in the right place (relative to the plant), at the right rate, at the right time to meet the needs of each specific crop, in each specific field. These four rights, or the 4Rs, address agronomic efficiency and environmental stewardship. Custom blending is a critical part of this process, because it allows precise formulation which minimizes environmental losses while maintaining farm profitability.

In most cases the farmer will call in their "custom blend" order the same day they pick it up, which can be in as little as 30 minutes from the time they place the order. None of these custom blends are prepared ahead of the farmer's order and they are not stored at the facility for next day delivery or pick-up. These "just in time" blends are loaded directly in a truck trailer, and then taken directly to the farm, where they are loaded in the applicator and applied to the field for which it was prescribed.

Of the fertilizers that have a hazardous characteristic, most of them are either skin or eye irritants. In rarer cases, there are products that can be corrosive or have some other more severe hazard characteristic. Most fertilizer blends, even though they may have a wide range of components, would have the same hazard characteristics (i.e., eye or skin irritant). Many of our retailer members do not handle any product that is more hazardous than an eye or skin irritant, and of those that do, the more hazardous product is only used in 10 percent or less of their blends. Only where one of the products with a more hazardous material is included, would the hazard characterization, and classification of the blend change.

Under the HCS of 1994, the standard industry practice was to provide the material safety data sheets (MSDS) to the farmer for each component of a blend with a hazardous characteristic. Because of the rate at which blends can be generated, the only documentation that is produced is the bill of lading and labels. Hazards were communicated through the bill of lading, and the component MSDS(s).

In conversations representatives of our organizations have held with some OSHA staff, we have been told that custom blending of fertilizer would be considered "production," and by definition, production is a part of chemical manufacturing under the HCS 2012. It is our understanding that because blending is considered production, the HCS requirements for preparing an individual SDS and label are triggered and as such, would be required for each custom blend. We were informed that OSHA would be willing to accept a "generic" SDS to cover custom blended fertilizers with a broad range of component parts, provided the hazards had not changed as a

result of the blend.

**Question 1:** Is it OSHA’s interpretation that the custom blending of fertilizer (i.e. where no chemical reaction occurs and no new hazard are created ), where the blend is immediately loaded for transportation to the end user (i.e. the farmer), constitutes “chemical manufacturing” and would trigger the HCS of 2012 requirements for labeling and SDS generation?

**Question 2:** If agricultural retailers are required to prepare new SDSs for their custom fertilizer blends, may they rely on the language at 29 CFR 1910.1200(g)(4) to prepare a single generic SDS to cover multiple blends? If this is the case, how similar do blends need to be to be covered under the same SDS? Specifically, what range of concentrations of components in blends are acceptable, especially where the underlying hazards are not changed as a result of the variation in the concentration of each component, and the hazard categorization is based on the “worst case”? An example copy of a “generic” SDS is attached. Would it meet the HCS 2012 requirements?

Application of the HCS of 2012 for manufacturing to fertilizer retailers will create a significant economic and time consuming burden on the industry without commensurate benefit. Because hazards associated with fertilizer products are well communicated through bills of lading, and labels, complying with the SDS generation requirements will have no added safety benefits to workers.

Currently the industry is unaware of any software that can generate SDSs that meet the needs of the thousands of agricultural retailers that provide custom fertilizer blends for hundreds of thousands of farmer customers, each with their own agronomic requirements. While there are expensive software packages that can generate SDSs, they often present incorrect information and require further editing by someone who has knowledge of both the product and the hazards. None of these software packages can generate SDSs in real time, at the rate that custom blends are generated, and in a way that is useable by retailers who have limited staff. Because blends may be ordered and shipped in under an hour, there is no way to anticipate what blends will be generated and prepare an SDS ahead of time.

To provide some context, since January 1, 2015, one of our mutual members has prepared over 5,100 blends containing mixtures of some portion of 120 different ingredients. Another of our members operates a facility that averages 25 blends per day, many of these are prepared and shipped in under an hour. A third member has over 1300 components available, any multiple of which, could be used in a blend.

We are very concerned that it may not be possible to serve our farmer customers and at the same time, prepare a multitude of unique SDS. As discussed above, most agricultural retailer facilities have a limited number of employees. We believe there are ways to communicate the hazards of a custom fertilizer blend, without requiring a newly generated SDS. This can be accomplished either by listing the hazards on the bill of lading, or through the development of a generic SDS for a broad range of blends with similar hazard characteristics.

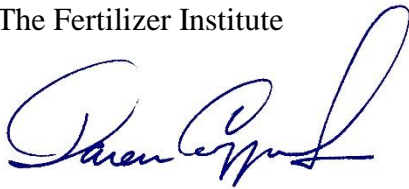
**Question 3:** If OSHA does not view the generation of generic SDSs, as discussed above, as HCS 2012-compliant, what could OSHA recommend as guidance to accommodate the small entity agricultural custom blending operations described in this letter?

TFI, ARA, RISE and our member companies appreciate your time and look forward to your response. The fertilizer industry stands ready to work with OSHA to resolve this matter. Please do not hesitate to contact Wade Foster with TFI at (202) 263-9142, Richard Gupton with ARA at (202) 595-1699, or Aaron Hobbs with RISE at (202) 872-3861 if you have questions or would like to discuss these concerns in greater detail.

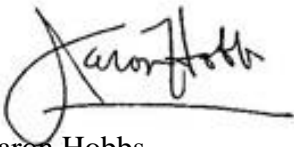
Sincerely,



Chris Jahn  
President  
The Fertilizer Institute



Daren Coppock  
President & CEO  
Agricultural Retailers Association



Aaron Hobbs  
President  
Responsible Industry for a Sound Environment

Cc: Sven Rundman

Enclosure