



23 December 2019

Consultations – Harmonized System
Environmental Protection Authority
Private Bag 63002
WELLINGTON 6140

Email: HSnotices@EPA.govt.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council (NZFGC) wishes to present on the *Implementation of the Globally Harmonized System of Classification and labelling of Chemicals, Revision 7 (2017): Consultation Document October 2019*.

NZFGC agrees to the publication of the submission with the signature below redacted.

Yours sincerely

Katherine Rich
Chief Executive



***Implementation of the Globally
Harmonized System of Classification and
labelling of Chemicals, Revision 7 (2017):
Consultation Document October 2019***

**Submission by the New Zealand Food & Grocery
Council**

23 December 2019

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Implementation of the Globally Harmonized System of Classification and labelling of Chemicals, Revision 7 (2017): Consultation Document October 2019.***
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

BACKGROUND

3. The Environmental Protection Authority (EPA) is proposing to update New Zealand’s current hazardous substance classification system to Revision 7 (2017) of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS7). The Globally Harmonized System has been developed by the United Nations to classify chemicals and communicate their hazards through labels and safety data sheets. First published in 2003 after over a decade of development and revised around every 2 years, it has progressively replaced a myriad of differing country-specific systems that had made trading in chemicals very costly.
4. The GHS is implemented in over 60 countries, including the European Union, USA, Canada, China, Japan, Singapore, Indonesia, Malaysia, New Zealand, South Korea and Thailand. However, the edition of the GHS that is adopted varies across the globe. Australia is transitioning to GHS7 as is the EU (both should be applying GHS7 requirements by October 2020). The USA and Canada have indicated they will soon be moving to GHS 7, with implementation planned in these economies around 2020-21. Members of the Asia-Pacific Economic Co-operation have all indicated intentions to move to GHS 7 in the near future but no timeframe is available.
5. GHS7 covers physical, health and environmental hazards in its classification and one of its main goals was to reduce the need for animal testing. Communication through standardised symbols and signal words is core to the system. The Harmonized System safety data sheets for chemicals cover: identification; composition; physical and chemical properties; toxicological and ecological information; hazards; handling, transport and storage; exposure control/personal protection; first aid, accidental release and firefighting measures; and regulatory and other information.

OVERARCHING COMMENTS

6. NZFGC recognises bespoke systems for the classification and labelling of chemicals add substantially to the cost of international trade of chemicals. The EPA is proposing to adopt GHS7 with a number of departures.
7. In relation to the proposals, NZFGC:
 - supports the non-adoption of Acute toxicity Category 5, Skin irritation Category 3 and Aspiration hazard Category 2 for reasons of consistency with the non-adoption by several trading partners and close neighbours
 - support non-adoption of the classification class for substances hazardous to the ozone layer due to primary legislation barriers to adoption of this classification and alternatives available for such considerations

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- does not support adoption of Flammability liquid category 4 on the basis of consistency with trading partners and near neighbours and to avoid creating unnecessary confusion and complexity
 - does not support adoption of all seven of the GHS categories relating to Acute 1-3 and Chronic 1-4 categories for hazardous substances especially Acute 2 and 3
 - harmonisation has been the rationale in the above but even though several of the same countries have not adopted these categories, the EPA is taking the opposite decision. We do not believe it appropriate for New Zealand to be out of step internationally and to be considerably more conservative in our approach at this time in relation to substances hazardous to the aquatic environment especially since there is no foreseeable timing in the public arena for Australia to change its position
 - does not support mandating the lower cut-off values being selected where optional concentration cut-off values are provided for classification criteria for mixtures contained in the GHS
 - there is no pattern across international jurisdictions for selecting the higher or lower cut-off levels. For example, US, Canada and China have adopted the lower levels while Australia and the EU has adopted the higher levels. NZFGC sees no rationale for mandating lower levels across the board where higher levels can be accommodated in products from some countries
 - supports the limited application of a single classification category for terrestrial ecotoxic substances in New Zealand
 - does not support the addition of only a two-year transition period which will conclude possibly December 2023. Instead we recommend an additional four-year transition period
 - clearly, industry is incentivised to make changes sooner rather than later as our trading partners move progressively to GHS7. However, the four-year transition takes account of the complexity of changes across the board and the impact on small to medium sized businesses
 - NZFGC considers an additional two-year transitional period to be insufficient and inequitable and instead supports an additional four-year transition period to December 2025
 - considers that during transition, it will be important for both formats of the safety data sheets to co-exist during transition time
 - supports stock-in-trade provisions, to ensure that suppliers and end users are not affected by the new labelling and safety data sheet obligations during the transition period such that all products manufactured or imported before the transitional period ends can continue to be supplied without needing to meet GHS7 requirements. In practice, this means existing labels would still be acceptable for suppliers and end users until local stock runs out
 - notes there are costs associated with adopting GHS7 for both industry and Government. For industry, this includes costs to:
 - relabel products
 - prepare new safety data sheets
 - reclassify products covered under a group standard
 - update in-house systems to accept GHS classifications
 - training and education on the new classification system
 - recognises the long term benefits from being aligned with other countries using GHS7. These would include reduced costs for chemical imports.

DETAILED COMMENTS

8. NZFGC recognises the significant cost in developing bespoke classification systems for the classification and labelling of chemicals and the cost that such systems add to the international trade of chemicals. It is therefore surprising to NZFGC that New Zealand has taken over 15 years to propose adoption of such an international system when we are very active in many international trade fora. We note that adoption was consulted on in 2014 but deferred due to the transfer issues associated with the Health and Safety at Work legislation.

Proposals for non-adoption

9. EPA is proposing to adopt GHS7 with three exceptions by not adopting:

- Acute toxicity Category 5
- Skin irritation Category 3
- Aspiration hazard Category 2
- Classification class for substances hazardous to the ozone layer.

10. In relation to Acute toxicity Category 5, we note this has not been adopted by the EU, Australia, Canada, the US, Republic of Korea, Singapore, Malaysia, Indonesia, Chile and the Philippines. We agree with not adopting it in New Zealand. Japan has adopted this into some laws and it has been adopted by China but extent of application is not known. We note the rationale for exclusion as primarily harmonisation and that doing so does not impact child resistant packaging, personal protection equipment or workplaces.

11. In relation to Skin irritation Category 3, this is the lowest GHS classification category for mild skin irritation. As with Acute toxicity Category 5, a broad range of countries have also not adopted this category (EU, US, Singapore, Malaysia, Japan, Korea, Indonesia, Canada, Philippines, Chile and Australia). The rationale is similar and harmonisation internationally is preserved. Adoption in other countries is not covered in the consultation document.

12. In relation to Aspiration hazard Category 2, the HSNO classification does not contain a specific classification category but it is covered under other criteria relevant to the hazard. Australia, US, Canada, the EU, Singapore, Malaysia, Japan, Korea, Indonesia, Philippines and Chile have not adopted this provision and harmonisation is the rationale for non-adoption.

13. We therefore support the non-adoption of Acute toxicity Category 5, Skin irritation Category 3 and Aspiration hazard Category 2 for the foregoing reasons.

14. In relation to the classification class for substances hazardous to the ozone layer, we note that there are primary legislation barriers to adoption of this classification and there are alternatives available for such considerations.

15. We therefore support non-adoption of the classification class for substances hazardous to the ozone layer.

NZFGC recommendation re non-adoption of Flammable liquid Category 4

16. The EPA is proposing to adopt Flammability liquid category 4. The EU and several countries around New Zealand eg Singapore, Malaysia, Korea, Indonesia, and the Philippines have not adopted Flammable liquid Category 4.

17. NZFGC therefore does not support adoption of Flammability liquid category 4 on the basis of consistency with trading partners and to avoid creating unnecessary confusion and complexity.

Proposals for adoption

18. The EPA is proposing to adopt all seven GHS categories for substances hazardous to the aquatic environment covering Acute 1-3 and Chronic 1-4 categories. Previously this has not been the case. In 2014, the EPA proposed not to adopt Acute 2 and 3.

19. Several countries have not adopted these provisions eg Australia, US, Canada, the EU, Singapore, Korea, Indonesia, Philippines Malaysia, Mexico and Chile although the paper notes China and Japan have and the EPA suggests that Australia is reforming its chemicals notification scheme and adoption is anticipated.

20. We find this decision for adoption of all seven GHS categories for substances hazardous to the aquatic environment to be inconsistent and not supportive of harmonisation. In other areas where non-adoption has been proposed, where the majority of the trading world has not adopted a provision, harmonisation has been the rationale. We do not believe it appropriate for New Zealand to be out of step internationally and to be considerably more conservative in our approach at this time in relation to substances hazardous to the aquatic environment especially since there is no foreseeable timing in the public arena for Australia to change its position. Prospective changes in Australia may remain prospective for several years as has been the case in New Zealand more broadly.

21. We do not support adoption of all seven of the GHS categories relating to Acute 1-3 and Chronic 1-4 categories for hazardous substances especially Acute 2 and 3.

Concentration cut off levels

22. EPA is proposing that the classification criteria for mixtures contained in the GHS will be incorporated into the EPA notice by reference but that where optional concentration cut-off values are provided for, EPA proposes the lower levels be taken. No cut-off levels are currently set in EPA Classification Notices although some are included in guidance where the lower levels have been favoured. There is no pattern across international jurisdictions for selecting the higher or lower cut-off levels. For example, US, Canada and China have adopted the lower levels while Australia and the EU have adopted the higher levels. The EPA states that the higher levels in products from Australia and the EU can be accommodated by the alternative compliance provisions in the Labelling and Safety Data Sheet Notices without incurring additional compliance costs.

23. We see no rationale for mandating lower levels across the board where higher levels can be accommodated in products from some countries. We therefore do not support the mandating of lower level concentration cut-off values classification. We recommend that for consistency, to remove complexity and uncertainty and for simplicity, higher levels are set thereby accommodating all lower levels in products without reference to other, overriding provisions across the New Zealand hazardous substances legislation.

Classification category for terrestrial ecotoxic substances

24. New Zealand currently has three categories for terrestrial ecotoxicity based on the prepublication GHS in 2001: ecotoxicity for soil, terrestrial vertebrates and terrestrial invertebrates. Since the GHS was published in 2003 with a single category, no consensus around sub-categorisation has been reached. EPA is therefore proposing that, for international alignment a single classification category for substances that are ecotoxic to the terrestrial environment be applied but only to agrichemicals and related substances.

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25. The EPA proposes consequential labelling changes but will require terrestrial ecotoxicity hazards to continue to be identified in Safety Data Sheets.
 26. NZFGC supports the limited application of a single classification category for terrestrial ecotoxic substances in New Zealand.

Transition and Consequential amendments to other EPA Notices

27. Several consequential amendments to EPA Notices are foreshadowed which will have flow-on effects to changes already made to accommodate changes from the Labelling, Safety Data Sheet, and Packaging Notices. Businesses that have completed or are well-advanced in making changes as a result of these 2017 changes for which a four year transition was provided through to Dec 2021, will be penalised for their efficiency by having to review and amend all changes made to date. Businesses that have not started on the 2017 changes will have only a single suite of changes to make. This is inequitable and penalises businesses that are proactive and efficient.
28. NZFGC notes that when Australia implemented the 3rd revised edition of the GHS (GHS3) under its model Work Health and Safety (WHS) laws on 1 January 2012, a transition period of 5 years was provided. The Australian proposal is for a two-year transition to move to GHS7 is from a more advanced base than New Zealand. In addition, the two-year transition has not been settled, as a 'stock in trade' arrangement is still to be determined for out years.
29. NZFGC does not support the addition of only a two-year transition period which will conclude possibly December 2023. Instead we recommend an additional four-year transition period such that companies that moved early on the 2017 changes are not penalised for doing so whilst those that have not started can now combine all changes and conclude these by December 2025. Clearly, industry is incentivised to make changes sooner rather than later as our trading partners move progressively to GHS7. However, the four-year transition takes account of the complexity of changes across the board and the impost on small to medium sized businesses.
30. NZFGC therefore does not consider an additional two-year transitional period for Labelling, Safety Data Sheet, and Packaging Notice changes to be sufficient or equitable and instead supports an additional four-year transition period to December 2025.
31. During transition, it will be important for both formats of the safety data sheets to co-exist during transition time.
32. In terms of stock-in-trade provisions, it will also be important to ensure that suppliers and end users are not affected by the new labelling and safety data sheet obligations during the transition period. NZFGC proposes that all products manufactured or imported before the transitional period ends can continue to be supplied without needing to meet GHS7 requirements. In practice, this means existing labels would still be acceptable for suppliers and end users until local stock runs out

Costs of change

33. NZFGC appreciates there are costs associated with adopting GHS7 for both industry and Government. For industry, this includes costs to:
 - relabel products
 - prepare new safety data sheets
 - reclassify products covered under a group standard
 - update in-house systems to accept GHS classifications
 - training and education on the new classification system.

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34. These are not insubstantial but industry also recognises the long term benefits from being aligned with other countries using GHS7. These would include reduced costs for chemical imports.
 35. Timing is significant and NZFGC repeats its support for an additional four-year transition to ensure that all have the opportunity to get their changes completed in a timeframe that works for them.
 36. If New Zealand adopts GHS8 or later versions during this period, then a consideration of an additional timeframe could be considered at that time.