Use of “should”, “shall”, “may” and “must” in the GHS

Transmitted by the expert from the United States of America

I. Summary

1. This paper serves as a general guide to discussion of the meaning of the above-referenced terms. The goal is to reach consensus on the meaning of these terms. This will allow the intersessional work of interested parties to proceed with the contextual analysis of the terms, and to develop explanatory text to be included in chapter 1.1 of the GHS clarifying the terms as used in the GHS.

II. Background

2. Informal papers INF.20 (forty-fourth session) and INF.19 (forty-fifth session), identified issues in the use of the above-entitled terms in the GHS regarding whether certain action is required or mandatory, and not merely suggested or recommended.

3. In INF.19 (forty-fifth session), the expert from the United States of America assembled a draft, in table format, of some in-context instances of the terms above as well as other similar terms or phrases perhaps requiring clarification of their meaning. Instances of “shall” and “must” in Part 2 (Physical hazards) were located in a separate table as specific test methods are required for many physical hazards.

4. Available interested parties met virtually on 28 May 2024, and notes were circulated to all interested parties on the distribution list. It was noted that, during the original drafting of the GHS, “shall” and “must” were used as regulatory text in certain circumstances. However, in many cases “should” was used in the GHS with the expectation that during implementation competent authorities would consider changing “should” to “shall”. There was general agreement on the need to clarify the terms and interpretations, so that the Sub-Committee has clear guidance on how to prepare new or updated text and to aid competent authorities as they implement the GHS into regulatory text.

5. The interested parties agreed that the expert from the United States of America would draft explanatory language based on the Transport of Dangerous Goods (TDG) regulations and other sources. To that end, the group noted the TDG introductory language provides: “Although only a recommendation, the Model Regulations have been drafted in the mandatory sense (i.e., the word “shall” is employed throughout the text rather than “should”) in order to facilitate direct use of the Model Regulations as a basis for national and international transport regulations.”. The
aim is not to develop a Model Regulation for the GHS but to use the TDG introductory language as a source.

6. It was also noted that the International Maritime Dangerous Goods (IMDG) Code provides: “It needs to be emphasized that, in the context of the language of the Code, the words 'shall', 'should' and 'may', when used in the Code, mean that the relevant provisions are ‘mandatory’, ‘recommendatory’ and ‘optional’, respectively.”

7. After the meeting, additional information was provided: the U.S. Department of Transportation Hazardous Materials Regulations (HMR) Rules of Construction at 49 Code of Federal Regulations section 171.9 provide in pertinent part:

“In this subchapter, the word:

(1) “Shall” is used in an imperative sense;
(2) “Must” is used in an imperative sense;
(3) “Should” is used in a recommendatory sense;
(4) “May” is used in a permissive sense to state authority or permission to do the act described, and the words “no person may * * *” or “a person may not * * *” means that no person is required, authorized, or permitted to do the act described ******.”

8. Additional feedback included a belief that the terms are clear enough, particularly as expressed from the IMDG Code cited above.

9. It was also noted that use of “shall” and “must” depend on the legislative drafter, but both words are interchangeable; and it was noted that it would be good if that position could be affirmed so as to proceed.

10. The interested parties meeting on 28 May 2024, determined that rules for use would aid in reviewing the GHS to see impact in context, and that an explanation might be needed as to why we need to use mandatory language and what it means in context. Post-meeting input supported an in-context review, reasoning that the GHS at times does not clearly distinguish between what is to be considered criteria and what is provided as explanatory text/guidance.

11. The meeting participants selected pilot chapters to work through examples for the following chapters: (1) for physical hazards: Chapter 2.2 Flammable Gases, (2) for health hazards: Chapter 3.6 Carcinogenicity, and (3) Chapter 1.3 Classification.

12. The meeting participants also discussed the impact of this work on existing and future informal working groups, which could benefit as they consider the terms in future proposals to be integrated into the GHS.

III. Proposal

13. That the GHS include an explanatory note to clarify the meaning of the above-entitled terms. For example:

“The GHS uses terms “shall” and “must” to signal that the described condition or action is mandatory in order to conform to GHS recommendations, “should” signals that the described condition or action is recommendatory in

1 Additional information for example: the US Department of Labor Occupational Safety and Health Administration defines an "occupational safety and health standard" as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." Whatever the meaning agreed upon, with the input of dictionary use whether from the Oxford English Dictionary used by the United Nations, or other, the terms will help lead the intersessional work.
order to conform to GHS recommendations, and “may” signals that the described condition or action is optional in order to conform to GHS recommendations.”

IV. Action requested

14. The Sub-Committee is invited to provide feedback on the proposal in paragraph 13 which feedback will be incorporated by the intersessional group while it continues its work.