CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
Senior Vice President
Labor, Immigration & Employee Benefits

1615 H Street, N.W.
Washington, D.C. 20062
202/463-5448

MARC D. FREEDMAN
Executive Director, Labor Law Policy
Labor, Immigration & Employee Benefits

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Re: Comments on OSHA–H022K–2006–0062, Hazard Communication; Globally Harmonized System of Classification and Labeling of Chemicals ("GHS"); 74 Fed. Reg. 50280 (Sept. 30, 2009)

To the Docket:

The U.S. Chamber of Commerce, the world's largest business federation with over three million members, represents businesses of all sizes and in every market sector and throughout the United States which will be directly affected by OSHA's implementation of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The Chamber appreciates the benefits of implementing a system harmonized with other countries where American products are likely to be sold.

Members of the U.S. Chamber of include chemical manufacturers, chemical importers, and downstream users of hazardous chemicals. Over 96 percent of the Chamber's members are small businesses employing 100 or fewer employees. The Chamber is particularly aware of the difficulties faced by small businesses in their efforts to interpret and comply with proposed OSHA rules such as the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

Notwithstanding complications that may arise, the Chamber supports OSHA's efforts to adopt international standards that promote consistency in the identification, classification, and labeling of chemicals. The Chamber is confident that the proposed rulemaking's intent of enhancing the effectiveness of the Hazard Communication Standard (HCS) by improving the quality and consistency of chemical hazard information will benefit the Chamber's members and their employees. The Chamber believes that the GHS system, if properly implemented, will also improve workplace safety as well as facilitate business growth and international trade, resulting in opportunities for job growth.

There are, however, several significant issues of concern raised by OSHA's proposal which, if addressed, will enhance this rulemaking's ability to achieve the desired goals and to maximize the benefits – improved workplace safety, consistent chemical classification and labeling, and conformity with international standards –without imposing unnecessary costs or creating confusion, especially regarding small businesses. They are summarized below:

- Revise or remove the "unclassified hazard" definition in the NPRM;
- Reconsider the impact of this proposal on small businesses and convene a panel pursuant to the Regulatory Flexibility Act as amended by Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 601 *et seq*.;
- Revise compliance and enforcement deadlines so that producers are required to produce the conforming Safety Data Sheets (SDSs) before the training requirement applies, and explicitly exempt down-stream users from the requirement to update labels;
- Review cost estimates, recognizing more preparation and training will be necessary for employers to come into compliance with this completely new system for classifying and treating chemicals and related products.

"Unclassified Hazards" Should be Revised or Withdrawn

The Chamber urges OSHA to reconsider the proposed addition of the term "unclassified hazards" which we believe will not only cause confusion to employers and employees alike but could allow the agency to impose significant new obligations on employers and employees without undertaking the necessary required rulemaking steps. The Chamber recommends that OSHA should either remove this definition in its entirety or, in the alternative, revise it in such a way that resolves all of the concerns highlighted below.

The current HCS defines specific harms–like toxicity, or combustibility–and regulates each hazard according to its specific traits. The proposed regulations continue in that tradition with one important exception: OSHA added to the regulations coverage for "unclassified" hazards, defined as follows:

> "Unclassified hazard" means a chemical for which there is scientific evidence identified during the classification process that it may pose an adverse physical or health effect when present in a workplace under normal conditions of use or in a foreseeable emergency, *but the evidence does not currently meet the specified criteria for physical or health hazard classification in this section*. This does not include adverse physical and health effects for which there is a hazard class addressed in this section. *See* NPRM, p. 50440 (emphasis added).

This definition is intended to provide "interim" coverage for a potentially wide range of hazards such as, combustible dust, and could include simple asphyxiates as well as other materials with "unclassified" hazards that OSHA may identify in the future. While the Chamber understands OSHA intends to regulate combustible dusts, and we recognize a need to

address other materials that arguably pose a hazard, we are concerned with the inclusion of the "unclassified" provision in this proposed rule for several reasons.

Fundamentally, OSHA's definition of an unclassified hazard is illogical. If the scientific evidence "does not currently meet the specified criteria for a physical or health hazard classification of this section" then *ipso facto*, the substance in question does not qualify as a hazard. Either OSHA must change the definition of what constitutes a hazard, or abandon this attempt to create a nebulous, unlimited category which will produce no safety benefits, but immeasurable confusion and potential employer liability.

By including combustible dust and other "unclassified hazards" in its rulemaking, OSHA is potentially short-cutting the robust OSHA regulatory process with its opportunities for stakeholders and the public to participate. The agency may choose the temptation of this broad, expansive provision to impose new requirements on employers without undertaking all of the steps in a full OSHA rulemaking. These steps are essential to providing those subject to the regulation an opportunity to participate in the process—a principal embedded in our system of government—and they also help the agency promulgate a better, more tailored regulation.

This broad definition will not provide any clarity for employers or employees, and this confusion could result in difficulties with compliance and a detriment to workplace safety. By way of explanation, OSHA states in the NPRM:

> OSHA has proposed a definition for unclassified hazards be added to the HCS to ensure that all hazards currently covered by the HCS—*or new hazards that are identified in the future*—are included in the scope of the revised standard until such time as specific criteria for the effect are added to the GHS and subsequently adopted by OSHA. NPRM, p. 50282 (emphasis added).

We are not sure how this provision will actually be implemented and how employers, ranging from manufacturers and downstream users, will be able to understand their obligations in order to comply. Questions abound:

- How does OSHA envision that any such "new hazard" will be communicated to the public and regulated community?
- Who will make the decision as to whether the chemical in question actually possesses the properties to result in a hazard present "under normal conditions of use" in the workplace when the scientific evidence does not support a hazard finding?
- Who will identify any such new hazards in the future?

Furthermore, despite OSHA's intent to "remain consistent" with the GHS, *see* NPRM Purpose**,** p.50386, the expansion of the existing HCS to cover unclassified hazards expands coverage beyond international standards, belying assurances of uniformity and consistency that lie at the heart of these revisions. In practical terms, should the proposal be adopted with this definition, the United States will again be "out of sync" with international requirements, leaving a fundamental goal of the NPRM unrealized.

For all of these reasons, the Chamber urges the agency to either revise or abandon the unclassified hazards provision. OSHA's proposal to use such a broadly defined term as "unclassified hazards" will provide a vehicle for the agency to implement standards imposing new obligations upon employers without going through the necessary public comment and deprives the public of the opportunity to provide helpful information for the agency. This is inconsistent with the principles of transparency and accountability that underlie sound rulemaking.[1] The Chamber is concerned that this broad definition will give the agency, when coupled with the deference granted by the courts, a tremendous power to circumvent rulemaking requirements for a wide variety of hazards, whether identified now or in the future. As it is not part of the UN-produced GHS, this would represent a departure from the goal of harmonizing the U.S. chemical and hazard labeling system with the international norm.

Regulating Combustible Dust Requires a Separate Rulemaking, Already Underway

By explicitly citing combustible dust as an example of an unclassified hazard, OSHA is attempting to use this GHS rulemaking to also create an obligation related to combustible dust specifically. This would allow the agency to take enforcement action against employers for failing to train employees on the purported dangers of a particular dust, which may or may not be combustible, when the agency has not yet even produced a definition of combustible dust. *See* NPRM, p. 50395 ("Final decisions have not been made regarding such rulemaking").[2]

The issues involved in OSHA's combustible dust rulemaking are difficult and implicate a wide range of workplace settings and types of operations, and will require the full range of OSHA rulemaking procedures to produce a final rule which reflects the necessary public input. To OSHA's credit the agency has taken the extra step of issuing an Advanced Notice of Proposed Rulemaking (ANPRM) to further solicit public input on this complex issue. [3]

OSHA is poised to impose new obligations on employers, without undertaking the normal regulatory process, when it is not even clear what obligations in training must be followed.[4] OSHA states in the NPRM that under this new definition of "unclassified hazards," "combustible dust *would be covered* as other hazardous chemicals are, including *information on labels, SDSs, and in training*," NPRM, p. 50395 (emphasis added). However, at the same time, OSHA is seeking public comment in its combustible dust ANPRM on what to include in

[1] Similarly, the Chamber objected to the use of ACGIH Threshold Limit Values (TLVs) in the context of the HCS (*see* the Chamber's comment to OSHA's ANPRM on Hazard Communication and the GHS, Docket No. H-022K, November 13, 2006) as being tantamount to "de-facto" exposure limits.

[2] In fact, OSHA asks for input from the public as to what "would be an appropriate definition for combustible dust to add to the GHS as a physical hazard." NPRM, p. 50395.

[3] *See* OSHA ANPRM on Combustible Dust, Volume 74 Federal Register, No. 202, October 21, 2009, pp. 54334-54347 (OSHA seeks public input on 69 questions covering a wide range of issues including the definition of combustible dust, engineering controls, administrative controls, as well as hazard communication and training).

[4] Training obligations could necessarily include, for example, an understanding of the particular engineering controls or administrative controls for the employees to follow, when OSHA has not even issued a regulation describing the required necessary controls.

precisely those same requirements, namely, SDSs and training.[5] In other words, OSHA appears to be saying that with the "unclassified hazards" definition, employers will now have to comply with certain requirements of a combustible dust standard—training, etc.—that OSHA has not even promulgated.

The example of SDSs for combustible dust illustrates the problems this backdoor rulemaking on combustible dust will create. How can an employer or producer understand what to include in a particular SDS for the combustible dust used or occurring in its operation when it is unclear as to whether that dust would even fall within coverage? Even more importantly, how is the employer expected to know what information to include about the dust related to this particular product? The Chemical Safety Board (CSB) has concluded that combustible dust hazard information was "poorly or inadequately transmitted to employers and workers" by SDSs because these obligations are unclear (ANPRM on Combustible Dust, p. 54342),[6] which is one of the reasons OSHA has cited as a basis for undertaking rulemaking on combustible dust. The Chamber is concerned with how OSHA expects employers to actually understand and comply with obligations for preparing SDSs and training employees for combustible dust, when so many of these issues are yet to be resolved in the separate combustible dust rulemaking. Precisely because of these difficult and challenging questions and issues the agency has undertaken notice and comment rulemaking, along with other legally required steps, develop a well supported and appropriately detailed regulation on combustible dust.

Moreover, OSHA has publicly admitted that it is using this unclassified hazards definition to implement its policy goals, such as implementing recommendations by the CSB. Acting Assistant Secretary for OSHA Jordan Barab, for example, explained earlier this year that:

> And you're probably aware the Chemical Safety Board also recommended that we recommend that [the UN] GHS [committee] address combustible dust, which they haven't done yet. So, we're addressing it through this [Hazard Communication Standard rulemaking] and using the unclassified hazards area to do that. It will require manufacturers to provide information on other known hazards, which would include combustible dust and, again, we have brought it up with the UN committee that's working on this issue.[7]

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[5] OSHA seeks input on a number of questions seeking information relating to SDSs and training, including but not limited to, questions on how employers train employees, who in the organization receives this training, how long and with what frequency is the training conducted, who provides the training, etc. ANPRM on Combustible Dust, pp. 54342-54343. OSHA states that it is "requesting information and comment from the public to evaluate what regulatory action it should take to further address combustible dust hazards within the general industry standards." *Id*. at p. 54341.

[6] The CSB also found in its study of SDSs that 41 percent of SDSs did not warn users about potential explosion hazards; and for those SDSs that included such information, "most of the information was not stated in a place or manner clearly recognized by employees, or not specific to hazards related combustible dusts." ANPRM, p. 54342.

[7] *See* http://www.ohsonline.com/Articles/2009/09/30/OSHA-Finally-Brings-GHS-to-America.aspx (last visited Dec. 21, 2009).

Expecting an employer to know its obligation to train its employees to follow a particular administrative control with respect to combustible dust when OSHA has not yet completed its rulemaking on combustible dust is asking employers to be able to discern OSHA's intent before the agency knows it itself. If this proposal is implemented employers could face OSHA enforcement on combustible dust requirements even though the agency has not yet promulgated a regulation, ranging from what to include in the SDS to how to train employees to handle the particular hazard. The Chamber believes that this NPRM is *not* the appropriate vehicle to address the difficult issues associated with combustible dust. Trying to expedite the combustible dust rulemaking by grafting it onto this GHS proposal will result in confusion among employers, inappropriate enforcement, and an undermined combustible dust rulemaking.

OSHA Declined to Convene a SBREFA Panel and Has Not Adequately Assessed the Impact on Small Employers

OSHA's decided to not subject this proposal to the SBREFA panel review process by which small businesses can provide input as to the actual impact this rule. Instead, OSHA chose to proceed without hearing directly from small employers as to the costs and other impacts, as well as potential benefits, of this proposed rule. The Chamber believes this decision was based on an economic impact assessment that severely underestimated the costs and burdens associated with compliance with this proposal and overestimated the benefits that will flow from it.

The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), amended the Regulatory Flexibility Act (RFA) to provide small businesses with a greater role in the development of federal regulations. Specifically, it requires that OSHA convene a Small Business Advocacy Review Panel when an OSHA proposed regulation is expected to have a "significant [economic] impact on a substantial number of small entities."[8] In the early stages of the rulemaking process, the panel composed of representatives from OSHA, OMB, and the SBA Office of Advocacy, reviews the proposed rule and hears comments from representative small entities. The panel then submits a report to OSHA describing the impacts and offering suggestions that might reduce them. OSHA reviews the panel's recommendations, revises the rule as appropriate, and proceeds with the proposed rule.

To avoid this panel review, and other requirements under the RFA, OSHA must certify that the proposed regulation will not have a significant economic impact on a substantial number of small entities, and provide a factual basis for this certification.[9] OSHA may define the terms "significant economic impact" and "substantial number of small entities" as it deems appropriate.

OSHA's procedures for compliance with SBREFA, specify that a proposed rule has a "significant [economic] impact" if the costs of the rule are estimated to exceed either 1 percent

[8] http://www.osha.gov/dcsp/smallbusiness/sbrefa.html.

[9] *See* 5 U.S.C. 605(b).

of revenue or 5 percent of profits.[10] In this rulemaking, OSHA has determined that the cost impact on a substantial number of small entities would be no more than 0.005 percent of revenues or 0.15 percent of profits, NPRM, p. 50363. Consequently, the agency did not subject this proposed regulation to the SBREFA panel process before publishing it.

The Chamber is particularly concerned about OSHA's certification that the proposed standard will not have a significant impact on a substantial number of small entities, NPRM, pp. 50281-82. We believe that OSHA's estimates of economic impact are much too low, and if this is the case, the agency's thresholds for SBREFA review of this proposed rule might have been met had the agency conducted a more accurate assessment.

Even if OSHA's thresholds were not met, the agency still had the option and authority to take advantage of the SBREFA process and to benefit from the input and data from small business entities in this process. OSHA's decision to forgo SBREFA panel review for this rulemaking is even more troubling when one considers that the agency has undertaken SBREFA reviews with a number of rulemakings that have impacted a smaller number of workplaces and employees than this proposed HCS revision which will impact 5,043,326 workplaces and 40,628,815 employees, NPRM, p. 50386. For example, OSHA just completed SBREFA review for its diacetyl rulemaking, which the agency admitted will impact only 139 establishments with an estimated 8,972 employees. The agency has also used the SBREFA process for rulemakings on cranes and derricks in construction (164,500 establishments and 2.2 million employees impacted); confined spaces in construction (potential impact on 86,012 small entities and 921,831 employees); and electric power generation, transmission, and distribution (12,619 small entities).

In contrast, this rulemaking implicates a wide category of employers, both large and small, across all types of operations. This rulemaking is broader in application than many of these rulemakings, with new requirements for training, associated management activities to understand and prepare for the new requirements, hazard determinations of all chemical products, as well as mixtures, along with new categories of hazards, including unclassified hazards. There are a large number of variables that will determine how these requirements will actually impact employers, especially small employers, and the agency would benefit from the opportunity to obtain data and information from small employers. OSHA's justification for avoiding SBREFA requirements—that its thresholds for determining whether there is a significant economic impact on a substantial number of small businesses were not satisfied—is even more illusory since the agency used the SBREFA process for the Confined Spaces in Construction rulemaking where the estimated impact on small entities was below its own threshold for SBREFA (percentage of profits between 0.23 and 4.4 percent which places the impact below the 5 percent threshold with a percentage of revenue also below threshold).

The broad and inclusive nature of the GHS and the proposed changes will have a significant direct impact on millions of small businesses as they transition and implement these complex new requirements as well as the annualized costs going forward. Although OSHA did include an analysis of costs to small businesses in Section VII H, NPRM, pp. 50355-50375, including Tables VII-6 and VII-7, this analysis does not reflect the direct input from small

[10] http://www.dol.gov/dol/regs/appendix.htm.

entity representatives as would otherwise happen through the SBREFA process. The SBREFA panel process would also have provided OSHA with important and valuable feedback on the proposed "unclassified hazards" provision.

OSHA has estimated that GHS compliance costs on an annualized basis for small businesses will be $63 million, and compliance costs for very small businesses with fewer than 20 employees will be $40 million, NPRM, Table VII-6, Table VII-7; pp. 50356, 50363. Because small businesses have fewer resources and are less able to efficiently absorb compliance costs than large businesses, small businesses will bear a disproportionately large share of regulatory compliance costs.[10] In fact, economic research shows that small businesses "shoulder a forty-five percent greater regulatory burden per employee than their large business competitors."[11] The transition costs would be significantly higher (*see,* e.g., transition costs for very small entities for the three year transition estimated at $463 million, p. 50363), and OSHA has failed to adequately explain how these costs were calculated or the assumptions used in these estimates. The imposition of a completely new system of classification of chemicals—replacing the long-established floor of lists of hazardous chemicals with the new specified and detailed hazard criteria set forth in Appendix A (health hazards) and Appendix B (physical hazards)—represents huge burdens on small employers with significant costs, which have not been sufficiently explained by the agency.

The fact that OSHA was required to issue a technical correction to its NPRM, published in the Federal Register on November 5, 2009, would seem to suggest that the agency would benefit from the type of input the SBREFA panel would provide. In this technical correction, the agency felt compelled to revise its estimate of small businesses impacted by this proposal (from 4,215,404 (NPRM, p. 50372) to 3,877,437 small business impacted), and revised its estimates of the societal benefits and the annualized safety benefits, as well as other corrections. *See* Technical Correction, 74 Fed. Reg. 57279. OSHA failed, however, to provide any explanation for these changes, further adding suspicion to the accuracy of the agency's assumptions and estimates. At this point it is unclear which of these estimates is correct, or is there another more accurate estimate still to be provided to the public and regulated community? The Chamber also notes that OSHA initially estimated that the proposed rule would have the "greatest impacts" on 72,000 small firms that "produce chemicals that require SDSs and labels," NPRM, p. 50372, but in light of the technical correction, doubt also shrouds these figures. OSHA's inability to provide a well supported estimate of the number of small entities that would be impacted by this regulation further suggests that OSHA would benefit from the type of direct input from small entity representatives as contemplated by SBREFA.

The SBREFA panel process is one of the few ways in which America's small businesses are able to voice concerns and provide feedback on proposed changes that impose significant regulatory burdens on them at a point where their input can actually influence the regulation. The Chamber believes OSHA should use the full opportunity for smaller employers to have the benefit of the SBREFA process to air their views about the particular

[10] Holman, Keith. "The Regulatory Flexibility Act at 25: Is the Law Achieving its Goal?" 33 Fordham Urb. L.J. 1119, 1123 (2005).

[11] Id.

impact of OSHA's proposed rule on their operations. It is not too late to undertake these steps. *See*, 5 U.S.C. sections 603, 605, and 609 (the SBREFA procedures can be implemented up to the publication of the final rule). To do otherwise, the agency faces the risk of producing a final rule which has not had the full benefit of the wide range of comments from the large segment of employers impacted by this rule.

New Requirements for the Treatment of Mixtures Will Impose Higher Burdens and Costs than OSHA has Indicated

OSHA has imposed a new obligation on employers for the classification of mixtures of chemical products, which the agency admits is a completely different approach for hazard classification and more complex to administer than the current HCS system. *See*, e.g., NPRM, p. 50393 ("The GHS approach [on mixtures] is not as simple to apply as the current HCS…"); p. 50290 ("…given the differences in classification under HCS and GHS applicable to mixtures.") These new additional requirements are more complicated and will increase the burdens on employers in reclassifying chemicals during both the transition phase and thereafter, thereby increasing costs, creating confusion, and increasing the length of time for some employers to come in compliance. The Chamber believes that OSHA has not properly explained how these new requirements will actually work in workplace settings, and has underestimated the costs and burdens created by these new steps on employers.

This proposed rule for mixtures provides, in pertinent part, that employers ("chemical manufacturers, importers, or employers evaluating chemicals") shall follow the detailed procedures for hazard determinations of mixtures, as set forth in Appendices A and B. NPRM, proposed regulatory text, Section 1910.1200 (d)(3), p. 50440. An employer who is a manufacturer or importer of chemical mixtures is responsible for the accuracy of the mixture classification even when relying of the classification of the individual ingredients provided by others. Id. at pp. 50440-41. Essentially, this new system applies a tiered approach for classification of mixtures, as opposed to the HCS approach of strict universal percentage cut-offs. NPRM, p. 50393. Although test data for the mixture in question can be used in the new system (just as in HCS), the new system also allows the use of extrapolations or "bridge data" to classify the mixture. Id. While OSHA claims that this new system will "allow for a more accurate assessment" of the potential hazard, this new system is complicated and difficult to evaluate and analyze, especially for small businesses.

There are a number of practical considerations with these new requirements for classification of mixtures which the Chamber believes OSHA has not adequately explained. As just mentioned, these new requirements in Appendices A and B are very technical, often complex and difficult to follow. The Chamber suggests that many of its members, especially smaller employers, will face challenges in understanding, analyzing, and implementing these new requirements. Without significant compliance assistance from OSHA,[11] many employers

[11] One requirement of SBREFA is for an agency to produce small entity compliance guides, *see* P.L. 104-121, Sec. 212. This requirement, however, only applies when the agency is required to prepare a final regulatory flexibility analysis. As a result of OSHA certifying that this regulation will not have a significant economic impact on a substantial number of small entities, OSHA will not be conducting a final regulatory flexibility analysis, and thus is not required to produce small entity compliance guides consistent with Section 212.

will simply not be able to comply with these highly technical and sometimes ambiguous rules. Employers could be subject to OSHA enforcement because of the use of a mixture of certain chemical products when there is a dispute in the scientific community as to whether this mixture is hazardous, and if so, what type of hazards, health or physical, are triggered by such mixture.

The Chamber recommends that OSHA take the necessary time to obtain sufficient information from employers, especially smaller employers, as to how these complicated procedures will impact the reclassification process. The Chamber further suggests that the agency provide more details as to how these new requirements are to be properly implemented, including compliance assistance guides consistent with Section 212 of SBREFA. The Chamber further requests that the agency take steps to ensure that it has the costs and burdens of these new procedures are accurately accounted for in the economic assessment of this regulation.

Compliance and Enforcement Deadlines Should Be Reversed

OSHA proposes two compliance deadlines: that employers implement training and education programs within two years of the final rule being published, and that manufacturers update labels and SDSs within three years of publication. *See* NPRM, p. 50402. The Chamber believes these staggered deadlines should be reversed so that the later deadline applies to training and education once the earlier deadline for revising SDSs has been met.

In particular, while the Chamber understands OSHA's goal to train employees before seeing the modified SDSs, many employers are concerned with the practical impact of training staff a full year or more before they see the actual labels and SDSs that will be in use at their facilities. Take, for example, a retailer who trains its employees early after final rule is issued (hypothetically, February 2011) to understand pictograms associated with its business operations. Those employees may not actually see those labels until as late as February 2013—and in the interim the employees will need to understand and appreciate that the labels that they see before that date may or may not mean something entirely different under the existing regulations, depending on whether that manufacturer revised its labels yet. As the regulation is proposed, to achieve an effective result, employers may need to train twice—once to meet OSHA's deadline and a second time to work through the real and practical issues presented by the revised labels/SDSs as they become available downstream. Accordingly, the Chamber believes, that OSHA should reverse the staggered compliance deadlines as between training and label/SDSs.

Also, with respect to the HCS labeling requirements, OSHA proposes to eliminate its current stay on enforcement of the requirement to update labels within three months of obtaining "new and significant" information concerning the hazard. *See* NPRM, p. 50391. The Chamber is concerned that this proposal places an unreasonable burden and expectation on businesses not well prepared to make these updates. Therefore, if OSHA insists on moving forward with removing the stay, at least these two modifications should be adopted: (1) that the requirement narrows the class of those who bear the primary responsibility for such update; and (2) that the time-frame for such revision be increased to no less than six months.

Under the current rule and its revision, the responsibility for updating labels moves "downstream," beyond chemical manufacturers, to employers who may use the hazardous materials in the workplace, notwithstanding OSHA's insistence that employers can rely on suppliers' information. *See, e.g.*, 29 CFR 1910.1200(d)(1). While the Chamber supports the idea that labels should be updated efficiently, employers who are merely using the chemicals are not in the best position to make these kinds of changes, much less to make such changes consistently and on a quick time-frame. The Chamber recommends that a single source be responsible for label updates or, that OSHA explicitly indicate that employers who only use materials are responsible only for posting updated information made available to them by the manufacturer. Importers should be able to rely on information supplied to them from upstream, rather than having to reanalyze or conduct new tests which would merely add inefficiencies, confusion, and costs.

OSHA Has Underestimated the Cost Burdens on Employers, and A More Detailed Explanation of the Estimated Costs Is Necessary

OSHA's proposal describes three "main categories" of costs triggered by these new requirements: (1) the cost of reclassification of chemicals under the new system and related revisions of the SDSs and labels; (2) the cost of training employees; and (3) the cost of management familiarization and other management costs associated with the administration of hazard communication programs. *See*, NPRM, p. 50323. The Chamber believes that these costs have been underestimated, specifically with respect to small business that will likely bear a disproportionate portion of the estimated costs of implementation and recommends the agency provide more information and explanation as to its estimates, so a realistic assessment of the costs can be presented to the public.

OSHA estimates that revising SDSs will range from three hours per SDS for large employers (over 500 employees), plus an average cost of $200 per SDS for software modifications for 95 percent of these employers; five hours per SDS for medium employers (100-499 employees) and average cost of $200 per SDS for 25 percent of these employers; and seven hours per SDS for small employers (1-99 employees). *See* NPRM, pp. 50324, 50337.

The Chamber believes these estimates are too low and that it will take substantially more time per SDS for large employers across several different categories of employees, and even more for medium and small businesses. While it may take an employee at a large company three hours to modify one SDS, that is not the end of the process. Decisions needs to be made about the classifications more generally, and those decisions are vetted carefully—as they should be. The new requirements for unclassified hazards and mixtures will take significantly more time to analyze and implement in the chemical classification process. Management time and resources need to be spent to review any revisions to ensure that the new classification and new labels/SDSs are appropriate and accurate. Most employers will also incur legal costs for counsel to review and analyze the revised SDSs to make sure the SDSs provide appropriate explanations and protection from liability. This legal review will increase not only costs on employers but will add to the time involved for employers to implement these new requirements.

OSHA's estimated cost of training is also low. By way of example, OSHA estimates that employers new to the classification system would only need to spend 30 minutes training employees on pictograms and other facets of the new regulation. OSHA allows only 15 minutes for those companies with limited exposure to hazardous materials, and five minutes for those employers who have already adopted the GHS. *See* NPRM, pp. 50336-37. Not only does this analysis fail to account for the time to develop, deliver and administer that program (*e.g.*, paperwork signed by the employee to verify attendance), but 30 minutes is simply not enough time for the average employer to train properly and thoroughly on these issues. Moreover, the Chamber believes that even the most experienced employer will be hard-pressed to accomplish any meaningful training in five minutes. More than five minutes would be needed to simply review the new requirements for labels and SDSs, let alone to allow employees to obtain any type of understanding of what is included in this information, which is the central purpose behind the Hazard Communication Standard itself.

OSHA's management familiarization estimates, may not take into account all necessary activities and its estimates are accordingly too low. For example, OSHA has estimated that a maximum of eight hours of time will be spent on the familiarization and implementation of these revisions for employers in the manufacturing sector. The Chamber anticipates that all managers who have roles related to the manufacture or handling of covered materials will need to spend substantially more time to understand the new regulations going forward. OSHA also claims that employers outside of manufacturing, and who have a health and safety supervisor, will face an estimated cost of two hours of time; and employers who do not employ a health and safety supervisor, OSHA estimates that they will face only "negligible" costs. These estimates appear to be low and calculated without a realistic evaluation of differing categories of workplaces. The Chamber believes that the costs for management familiarization will vary greatly from employers who manufacture chemicals and related products to the variety of downstream employers, as well as other employers in between. The Chamber suggests that OSHA provide more detailed information on these estimates and break down these estimates by categories of employers, so the estimated costs will more accurately reflect the particular operations of the wide range of employers impacted by this proposed rule.

These low estimates are magnified when taking the nature of small businesses into account. Because small employers have limited manpower, the employee who attends training is not performing his or her regular job functions, the trainer is not making sales calls, the manager is not filling out necessary paperwork, etc. Small businesses will face a wide variety of costs such as lost man-hours as well as increased overtime costs. The extent to which OSHA has underestimated the compliance costs further suggests the value of OSHA conducting a SBREFA panel review to get a more detailed and accurate understanding of how this regulation will impact small businesses.

OSHA's transition costs estimates are significantly higher (total estimate of $1 billion) than the total estimated annualized costs for all employers ($97 million). The lowest cost category for these totals in both transition costs and annualized costs is the estimated cost for reclassification: (1) transition costs include $131 million for reclassification of chemicals and related label and SDS revisions, but $519 million for training costs and $489 million for management familiarization costs; and (2) annualized costs include $11 million for

reclassification of chemicals but $44 million for training costs and $42 million for management familiarization costs.

These estimates for reclassification costs seem almost impossibly low, as this proposed rule is creating an entirely new system of chemical classification, replacing the established floor of hazardous chemicals on a designated list with this entirely new system of evaluating every chemical product with detailed hazard criteria (health hazards and physical hazards) as well as the severity of the particular hazard. These new hazard classifications are set forth in detail in Appendices A and B to this proposed rule, and these very technical and detailed procedures will be difficult even for the most experienced employer to not only understand but to analyze and implement. Adding to the challenge for employers, the agency has added the requirement for unclassified hazards as well as the new rules for chemical mixtures. The Chamber believes that this process to evaluate and reclassify every chemical product will be more complex and difficult than the agency suggests, particularly during the transition period. The Chamber urges OSHA to adequately evaluate these costs and burdens, including obtaining all available information from stakeholders, such as conducting a SBREFA panel review, and to revise these estimates so they accurately reflect the actual impact of these new requirements. In addition, OSHA should provide more detailed explanation of its costs estimates.

OSHA Has Overestimated the Benefits of This Proposed Rule, and A More Detailed Explanation Is Necessary

The Chamber is concerned that OSHA has overestimated the utility and benefits of this proposed revision to the HCS and has simply not provided sufficient explanation as to how these estimated benefits were calculated. The Chamber urges OSHA to undertake a more comprehensive review of the potential benefits of this proposed rule, including but not limited to the input provided by small business entities in the SBREFA panel process, in order to provide to the public a more accurate picture of the benefits.

While the Chamber believes that these proposed revisions to the HCS, if properly implemented, will provide benefits to employers and employees alike, the Chamber urges OSHA to explain in greater detail exactly how it calculated the estimated benefits as set forth in Table VII-1 and elsewhere in the proposed rule. There is not sufficient information for the Chamber, or any other stakeholder, to understand or evaluate the assumptions the agency used in calculating the purported benefits. The agency seemed to rely in part on selected anecdotal evidence, see e.g., discussion on pages 50307 and 50308 of the NPRM, as the basis for these estimates. OSHA even admits it is "difficult to quantify precisely", how many injuries will be avoided with this proposed rule, NPRM, p. 50308, but then the agency fails to provide any detailed explanation or data to support its calculations. The fact that the agency was forced to revise several of its estimates for the benefits of this proposed rule in the Technical Correction (see discussion in the SBREFA section of this comment for more details) further casts doubt on the accuracy of these estimates.

Conclusion

The Chamber supports OSHA's plans to update the existing HCS (29 CFR § 1910.1200) with the GHS. Properly implemented, this will promote consistency in the

identification, classification, and labeling of chemicals, improve workplace safety, and facilitate business growth and international trade. The Chamber is concerned, however, with several issues and parts of this proposal. In particular, we disagree with the creation of a sweeping and loosely defined "unclassified hazard" category, and its use to impose a combustible dust obligation that does not exist elsewhere.

We further believe OSHA should have conducted a SBREFA review panel to better understand how this regulation will impact small businesses, and that compliance deadlines for training and updating labels should be reversed. Finally, OSHA also appears to have severely underestimated the costs and burdens associated with this new regulation, and over estimated the benefits, nor has the agency supplied adequate explanations for either of these calculations.

Respectfully submitted,

Randel K. Johnson
Vice President
Labor, Immigration & Employee Benefits

Marc Freedman
Executive Director of
Labor Law Policy

Of Counsel:
Dennis J. Morikawa
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103