

November 2, 2006

BY ELECTRONIC MAIL

Edwin G. Foulke, Jr.  
Assistant Secretary for Occupational Safety and Health  
U.S. Department of Labor  
OSHA Docket Office, Room N2625  
200 Constitution Avenue, NW  
Washington, DC 20210  
Electronic Address: <http://ecomments.osha.gov> (OSHA Docket No. H-022K)

***Re: Advanced Notice of Proposed Rulemaking on Hazard Communication (Globally Harmonized System of Classification and Labeling of Chemicals (GHS))***

Dear Administrator Foulke:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) is pleased to submit the following comments on the Occupational Safety and Health Administration's (OSHA) *Advanced Notice of Proposed Rulemaking (ANPRM) on Hazard Communication (Globally Harmonized System of Classification and Labeling of Chemicals (GHS))*.<sup>1</sup> The ANPRM requests public comments on a number of issues related to the adoption of GHS and the modification of OSHA's Hazard Communication Standard (HCS). OSHA is requesting this information in order to prepare cost analyses and other documents required to support the rulemaking.<sup>2</sup> Advocacy recommends that OSHA carefully assess the impact of adopting GHS on small business and consider alternatives that would make the transition less costly and burdensome.

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>4</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required

<sup>1</sup> 71 Fed. Reg. 53617 (September 12, 2006).

<sup>2</sup> Id. at 53625.

<sup>3</sup> 5 U.S.C. § 601 et seq.

<sup>4</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272,<sup>5</sup> which requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

## **Background**

GHS is the product of a long-term international effort through the United Nations and other organizations to develop a globally harmonized system for the classification of chemicals for their health, physical, and environmental effects, as well as for developing uniform labels on containers and safety data sheets (SDS).<sup>6</sup> OSHA and other federal agencies have been intimately involved in the development of GHS for a number of years. Adoption of GHS by OSHA would require a modification of OSHA's current HCS.<sup>7</sup> OSHA's HCS requires chemical manufacturers and importers to evaluate the hazards of chemicals they produce or import, and to provide information on those hazards to downstream employers and employees through labels and SDSs. All employers with hazardous chemicals in their workplace are required to have a hazard communication program, including container labels, SDSs, and employee training.<sup>8</sup> OSHA's current HCS is a performance-based system that established requirements for container labels and SDSs, but does not mandate any specific language or a format to convey the information. GHS would change this by providing internationally standardized provisions for the classification of chemicals for their health, physical, and environmental effects, as well as for the content of container labels and SDSs.<sup>9</sup>

OSHA believes that there would be significant benefits in adopting GHS.<sup>10</sup> Specifically, OSHA says it would enhance the protection of workers and others potentially exposed to chemicals, facilitate international trade in chemicals, allow countries without adequate information systems to build chemical safety and health programs, and provide for an internationally consistent regulatory regime. OSHA would be required to convert the GHS recommendations and text into regulatory language that would modify the existing HCS.<sup>11</sup>

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<sup>5</sup> Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 Fed. Reg. 53461) (August 16, 2002).

<sup>6</sup> 71 Fed. Reg. 53617.

<sup>7</sup> Id.

<sup>8</sup> According to OSHA, the HCS now covers over 7 million workplaces, more than 100 million employees, and some 945,000 hazardous chemical products. (71 Fed. Reg. 53617).

<sup>9</sup> 71 Fed. Reg. 53617.

<sup>10</sup> Id. at 53620.

<sup>11</sup> Id. at 53619.

## **Small Business Concerns About The ANPRM**

Advocacy periodically hosts informal regulatory roundtables for small business representatives to discuss issues of concern to them. GHS has been discussed at several of our labor safety roundtables, including the one we hosted on September 15, 2006, where representatives from OSHA provided a detailed presentation on GHS and the ANPRM. In the discussion following OSHA's presentation, participants raised a number of concerns about the adoption of GHS that are summarized in the comments below:

1. Small business representatives want OSHA to remain open-minded with respect to the ultimate adoption of GHS. While it is clear that many businesses (especially large chemical manufacturers and exporters) strongly favor adopting GHS, there are also many small businesses that are concerned about the cost and compliance burden of changing from the current system. Advocacy recommends that OSHA carefully consider small business comments that recommend ways in which the impact of any future regulation can be reduced.
2. Small business representatives noted that if GHS is adopted by OSHA, the most significant costs for small businesses would emanate from small businesses having to redo their Hazard Communication Programs to reflect GHS, having to revise their chemical inventory lists, and having to retrain their employees on GHS (including the new international "pictograms"). Accordingly, these small business representatives recommended that:
  - OSHA consider developing a model Hazard Communication Program that could be easily adopted or adapted by small businesses, including the possibility of a web-based or a "writable-pdf" model plan;
  - OSHA consider providing on-line chemical inventory lists so that small businesses could electronically organize and maintain their chemical inventory lists. The small business representatives noted that OSHA should consider technological limitations of such alternatives, such as the possibility of Internet or computer outages;
  - OSHA consider developing a computer-based or "fax-back" Safety Data Sheet management program (as opposed to maintaining hard copies of these documents). The small business representatives noted that larger businesses can retain hard-copy compendiums of SDSs, but that this is a very significant cost and recordkeeping burden for small businesses. They also recommended that OSHA consider how businesses that move from location to location (such as construction firms) might be able to take advantage of such an electronic system;
  - OSHA should develop model training plans that can be readily accessible for small businesses. Small business representatives noted that since employees must be trained in every hazardous chemical that they could use or be exposed to, training programs could be highly complex and expensive.

3. Small business representatives also noted that many small businesses tend to “over comply” with the HCS since it is such an easily citable offense (i.e., OSHA can find some minor violation of the HCS at virtually any business because of the sheer complexity of compliance.) The small business representatives recommended that OSHA consider some enforcement relief for first-time or non-significant violations, and writing that relief into the proposal.
4. Small business representatives recommended that OSHA provide sufficient implementation time for businesses to use up inventories of stored chemicals. These representatives noted that these inventories often take years to consume for many small companies.
5. Small business representatives recommended that OSHA consider delayed phase-in dates for small businesses, and consider “grandfathering” or exempting small businesses that do not export regulated chemicals.
6. Finally, small business representatives were concerned that OSHA’s assumption that existing hazard assessment data used for container labels and SDSs can simply be re-classified to meet the new GHS requirements may be incorrect. These representatives noted that if the assumption is incorrect and new testing must be conducted that the transition would be significantly more expensive than currently envisioned. Advocacy recommends that OSHA carefully consider the assumption that existing hazard assessment data would be readily re-classifiable.

### **Regulatory Flexibility Act Determination**

The RFA requires federal agencies to analyze the impact of their regulations on small entities and to consider less burdensome alternatives.<sup>12</sup> If a proposed rule is expected to have “a significant economic impact on a substantial number of small entities,” the agency must prepare an IRFA and publish it in the *Federal Register* for public comment. In addition, for OSHA rules that meet this standard, the agency must convene a Small Business Advocacy Review (SBAR) Panel in accordance with the requirements of SBREFA to obtain advice and recommendations about how the proposed rule might affect small entities. Advocacy recommends that OSHA carefully assess the impact of adopting GHS and whether a SBAR Panel will be required. Advocacy would be pleased to assist OSHA in any way we can in determining how this rule would impact small business.

### **Conclusion**

Advocacy appreciates the opportunity to comment on OSHA’s ANPRM on *Hazard Communication (Globally Harmonized System of Classification and Labeling of*

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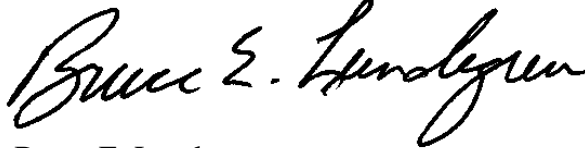
<sup>12</sup> 5 U.S.C 601 et seq.

*Chemicals (GHS)*). Please feel free to contact me or Bruce Lundegren at (202) 205-6144 (or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)) if you have any questions or require additional information.

Sincerely,



Thomas M. Sullivan  
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Bruce E. Lundegren  
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Copy to: Steven D. Aitken, Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget