

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

April 8, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

The Honorable Howard P. "Buck" McKeon
Ranking Member
Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

The U.S. Chamber, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, strongly opposes H.R. 5522, the "Combustible Dust Explosion and Fire Prevention Act of 2008." Although the explosion at the Imperial Sugar plant in Georgia was a terrible tragedy, rushing forward with a bill that would abandon all of the Occupational Safety and Health Administration (OSHA) rulemaking procedures and protections currently in place is neither an appropriate response, nor will it help prevent similar disasters from occurring in the future. We urge the Committee on Education and Labor to reject this bill.

H.R. 5522 mandates that OSHA issue an interim final regulation (IFR) within 90 days that would adopt voluntary consensus standards issued by the National Fire Protection Association (NFPA). The IFR would thus be issued without any opportunity for comments by those subject to it, nor would OSHA be able to perform any of the analyses associated with normal rulemaking examining significant risk, economic and technological feasibility, and small business impact, among others.

The bill would also require that within 18 months OSHA promulgate a final standard that would include all of the requirements of the IFR.¹ The provisions of the final standard would therefore have been set by this Committee rather than the safety and regulatory professionals at OSHA. The Chamber objects to the complete discarding of the normal rulemaking process and protections that this bill would impose. OSHA rulemaking is thorough and allows the agency to produce the most feasible, data based, narrowly tailored regulation possible, which in turn maximizes the likelihood of employers being able to implement the regulation and comply with it. Abandoning these procedures is a prescription for an ineffective regulation which will yield nothing more than penalties and litigation, not safer workplaces.

¹ OSHA's history of taking action after a congressionally-mandated interim final standard suggests that the IFR may be the final action on this issue. For example, the congressionally-mandated lead in construction interim final standard has never been put out for comment or modified since it was issued in 1993.

Converting the voluntary consensus standards issued by NFPA into a mandatory OSHA regulation, without any intervening action, may, in theory, be a good way to expedite rulemaking on this issue, but doing so without significant examination and changes would be inappropriate. The process for producing these consensus standards is not at all like the process which OSHA undertakes to produce a regulation. There is no opportunity for the general public to examine and comment on these consensus standards. Nor are these standards subject to any of the critical reviews regarding quality of data, feasibility, and impact that OSHA regulations must undergo. Because these standards are voluntary in nature companies understand that they may adopt portions of them, and ignore other portions. This would not be the case if these became mandatory OSHA standards. Because NFPA standards are produced under a consensus process, there are significant issues that are deliberately left vague and ambiguous so that different groups and interests will endorse these standards. These intentionally open-ended terms make such a voluntary consensus standard wholly inappropriate for becoming a mandatory OSHA regulation. In addition, none of the NFPA standards are available to the public without charge. While the NFPA has put them on their website, this only provides reading access. Printing them, so that they are available for use, requires paying NFPA a fee. The Chamber objects to giving NFPA such a windfall revenue stream.

Finally, this is an issue which is already covered by numerous OSHA regulations, and as this bill indicates, a wide array of information about the hazards of combustible dust also exists. There is no evidence that a new OSHA standard would improve employer knowledge of this hazard, or their response to it, particularly if that regulation is produced in the manner specified in H.R. 5522. The investigation of what caused the Imperial Sugar explosion is still underway, and there is no indication yet that a regulatory gap was the cause. OSHA has responded in the wake of the Imperial Sugar explosion in various ways that will help employers become more knowledgeable about this hazard including reissuing a Safety and Health Information Bulletin, and reissuing a National Emphasis Program that will combine greater information with greater inspection and enforcement activity for workplaces that may have combustible dust hazards. Providing employers with useful, practical information on how to avoid a hazard will always be more effective in preventing such disasters than issuing a new regulation which will only serve as a means for enforcement after the fact.

H.R. 5522 would produce a flawed regulation by discarding the normal OSHA rulemaking procedures and adopting voluntary consensus standards that are not appropriate for conversion to mandatory OSHA regulations. More and better information rather than more regulations will always be a better strategy for preventing these, as well as all other, workplace tragedies. The Chamber urges the Committee to reject H.R. 5522 as it is currently drafted.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

Cc: Members of the Committee on Education and Labor