

# OSHA Fairness Coalition

*Advocating for Balance*

June 19, 2007

TO THE MEMBERS OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR:

We write to inform you of our strong opposition to the bill recently introduced (H.R. 2693) by Rep. Woolsey that directs the Occupational Safety and Health Administration (OSHA) to issue a standard regulating exposure to diacetyl, a substance used to impart butter flavor to various foods. This bill would establish a regulation even though the science and data available are insufficient to support a regulation. Such a mandate would be completely at odds with all other laws, judicial decisions, executive orders and sound policy considerations under which OSHA currently operates.

This bill mandates that OSHA issue an interim final regulation within 90 days of enactment, and a final regulation which would include a Permissible Exposure Limit (PEL), within two years of enactment. Unfortunately, no data currently exist as to where such a line could be drawn. The very NIOSH document cited in the bill for the recommendations that are to be enshrined in the OSHA regulation also states with respect to diacetyl and other flavorings: "Little is currently known about which chemicals used in flavorings have the potential to cause lung disease and other health effects, and what workplace exposure concentrations are safe...Most chemicals used in flavorings have not been tested for respiratory toxicity via the inhalation route, and occupational exposure limits have been established for only a relatively small number of these chemicals." (NIOSH Publication 2004-110, pp.5-6).

Most importantly, this bill would completely ignore the carefully developed, balanced, and necessary requirements for rulemaking that Congress and the courts have put in place to make sure OSHA standards reflect the best science available, are responsive to a specific hazard, and are both technologically and economically feasible for the affected employers. Both Congress and the Supreme Court have made clear that OSHA can regulate only after it has satisfied specific requirements for data and analysis. In addition, OSHA's regulatory actions are subject to the rulemaking requirements of Section 6 of the Occupational Safety and Health Act, and the Administrative Procedures Act including provisions designed to protect small businesses. The interim final regulation specified by this bill, which would have the legal effect of an OSHA standard, would not be produced under such procedures, nor does the data exist to satisfy the requirements specified for the final standard.

This bill, while well intentioned, is ill conceived and should not move forward. Congress should not mandate that OSHA issue a regulation for which adequate data does not yet exist.

Sincerely,

Associated Builders and Contractors  
National Association of Home Builders  
Mason Contractors Association of America  
Printing Industries of America

National Association of Convenience Stores  
National Association of Manufacturers  
NFIB  
U.S. Chamber of Commerce

*The OSHA Fairness Coalition is Comprised of National Trade Associations, Professional Organizations, and Employers who Seek to Improve Workplace Safety by Bringing More Fairness and Balance to the OSH ACT*

*For More Information Please Contact  
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