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Union Calendar No. 149

110TH CONGRESS
1ST SESSION

H. R. 2693

[Report No. 110–239]

To direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2007

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, Mr. HARE, Ms. DELAURO, Ms. SOLIS, Mr. PAYNE, Mr. GRIJALVA, Mr. KUCINICH, Mr. KILDEE, Ms. SHEA-PORTER, Mr. BISHOP of New York, Ms. LINDA T. SÁNCHEZ of California, Mrs. MCCARTHY of New York, and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and Labor

JULY 18, 2007

Additional sponsors: Ms. ROYBAL-ALLARD, Mr. LOEBSACK, Mr. HOLT, and Mr. WAXMAN

JULY 18, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 13, 2007]

A BILL

To direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Popcorn Workers Lung Disease Prevention Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) An emergency exists concerning worker exposure to diacetyl, a substance used in many flavorings, including artificial butter flavorings.

(2) There is compelling evidence that diacetyl presents a grave danger and significant risk of life-threatening illness to exposed employees. Workers exposed to diacetyl have developed, among other conditions, a debilitating lung disease known as bronchiolitis obliterans.

(3) From 2000–2002 NIOSH identified cases of bronchiolitis obliterans in workers employed in microwave popcorn plants, and linked these illnesses to exposure to diacetyl used in butter flavoring. In December 2003, NIOSH issued an alert "Preventing Lung Disease in Workers Who Use or Make Flavorings," recommending that employers implement measures to minimize worker exposure to diacetyl.

(4) In August 2004 the Flavor and Extract Manufacturers Association of the United States issued a report, "Respiratory Health and Safety in the Flavor Manufacturing Workplace," warning about potential serious respiratory illness in workers exposed to flavorings and recommending comprehensive control measures for diacetyl and other "high priority" substances used in flavoring manufacturing.

(5) From 2004–2007 additional cases of bronchiolitis obliterans were identified among workers in the flavoring manufacturing industry by the California Department of Health Services and Division of Occupational Safety and Health (Cal/OSHA), which through enforcement actions and an intervention program called for the flavoring manufacturing industry in California to reduce exposure to diacetyl.

(6) In a report issued in April 2007, NIOSH reported that flavor manufacturers and flavored-food producers are widely distributed in the United States and that bronchiolitis obliterans had been identified among microwave popcorn and flavoring-manufacturing workers in a number of States.

(7) Despite NIOSH's findings of the hazards of diacetyl and recommendations that exposures be controlled, and a formal petition by labor organizations

and leading scientists for issuance of an emergency temporary standard, the Occupational Safety and Health Administration (OSHA) has not acted to promulgate an occupational safety and health standard to protect workers from harmful exposure to diacetyl.

(8) An OSHA standard is urgently needed to protect workers exposed to diacetyl from bronchiolitis obliterans and other debilitating conditions.

SEC. 3. ISSUANCE OF STANDARD ON DIACETYL.

(a) INTERIM STANDARD.—

(1) RULEMAKING.—Notwithstanding any other provision of law, not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate an interim final standard regulating worker exposure to diacetyl. The interim final standard shall apply—

(A) to all locations in the flavoring manufacturing industry that manufacture, use, handle, or process diacetyl; and

(B) to all microwave popcorn production and packaging establishments that use diacetyl-containing flavors in the manufacture of microwave popcorn.

(2) REQUIREMENTS.—The interim final standard required under subsection (a) shall provide no

less protection than the recommendations contained in the NIOSH Alert "Preventing Lung Disease in Workers Who Use or Make Flavorings" (NIOSH Publication 2004–110) and include the following:

(A) Requirements for engineering, work practice controls, and respiratory protection to minimize exposure to diacetyl. Such engineering and work practice controls include closed processes, isolation, local exhaust ventilation, proper pouring techniques, and safe cleaning procedures.

(B) Requirements for a written exposure control plan that will indicate specific measures the employer will take to minimize employee exposure; and requirements for evaluation of the exposure control plan to determine the effectiveness of control measures at least on a biannual basis and whenever medical surveillance indicates abnormal pulmonary function in employees exposed to diacetyl, or whenever necessary to reflect new or modified processes.

(C) Requirements for airborne exposure assessments to determine levels of exposure and ensure adequacy of controls.

(D) Requirements for medical surveillance for workers and referral for prompt medical evaluation.

(E) Requirements for protective equipment and clothing for workers exposed to diacetyl.

(F) Requirements to provide written safety and health information and training to employees, including hazard communication information, labeling, and training.

(3) EFFECTIVE DATE OF INTERIM STANDARD.—The interim final standard shall take effect upon issuance. The interim final standard shall have the legal effect of an occupational safety and health standard, and shall apply until a final standard becomes effective under section 6 of the Occupational Safety and Health Act (29 U.S.C. 655).

(b) FINAL STANDARD.—Not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act (29 U.S.C. 655), promulgate a final standard regulating worker exposure to diacetyl. The final standard shall contain, at a minimum, the worker protection provisions in the interim final standard, a short term exposure limit, and a permissible exposure limit that does not exceed

the lowest feasible level, and shall apply at a minimum to all facilities where diacetyl is processed or used.

SEC. 4. STUDY AND RECOMMENDED EXPOSURE LIMITS ON OTHER FLAVORINGS.

(a) STUDY.—The National Institute of Occupational Safety and Health shall conduct a study on food flavorings used in the production of microwave popcorn. The study shall prioritize the chemicals that are most closely chemically associated with diacetyl to determine possible exposure hazards. NIOSH shall transmit a report of the findings of the study to the Occupational Safety and Health Administration.

(b) RECOMMENDED EXPOSURE LIMITS.—Upon completion of the study conducted pursuant to subsection (a), NIOSH shall establish recommended exposure limits for flavorings determined by such study to pose exposure hazards to workers involved in the production of microwave popcorn.

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