

Calendar No. 400

110TH CONGRESS
1ST SESSION**H. R. 2693**

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2007

Received and read the first time

SEPTEMBER 28, 2007

Read the second time and placed on the calendar

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Popcorn Workers Lung
5 Disease Prevention Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) An emergency exists concerning worker ex-
9 posure to diacetyl, a substance used in many
10 flavorings, including artificial butter flavorings.

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

7 (3) From 2000–2002 NIOSH identified cases
8 of bronchiolitis obliterans in workers employed in
9 microwave popcorn plants, and linked these illnesses
10 to exposure to diacetyl used in butter flavoring. In
11 December 2003, NIOSH issued an alert “Preventing
12 Lung Disease in Workers Who Use or Make
13 Flavorings,” recommending that employers imple-
14 ment measures to minimize worker exposure to diac-
15 etyl.

16 (4) In August 2004 the Flavor and Extract
17 Manufacturers Association of the United States
18 issued a report, “Respiratory Health and Safety in
19 the Flavor Manufacturing Workplace,” warning
20 about potential serious respiratory illness in workers
21 exposed to flavorings and recommending comprehen-
22 sive control measures for diacetyl and other “high
23 priority” substances used in flavoring manufac-
24 turing.

1 (5) From 2004–2007 additional cases of
2 bronchiolitis obliterans were identified among work-
3 ers in the flavoring manufacturing industry by the
4 California Department of Health Services and Divi-
5 sion of Occupational Safety and Health (Cal/
6 OSHA), which through enforcement actions and an
7 intervention program called for the flavoring manu-
8 facturing industry in California to reduce exposure
9 to diacetyl.

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

16 (7) Despite NIOSH’s findings of the hazards of
17 diacetyl and recommendations that exposures be
18 controlled, and a formal petition by labor organiza-
19 tions and leading scientists for issuance of an emer-
20 gency temporary standard, the Occupational Safety
21 and Health Administration (OSHA) has not acted to
22 promulgate an occupational safety and health stand-
23 ard to protect workers from harmful exposure to di-
24 acetyl.

1 (8) An OSHA standard is urgently needed to
2 protect workers exposed to diacetyl from
3 bronchiolitis obliterans and other debilitating condi-
4 tions.

5 **SEC. 3. ISSUANCE OF STANDARD ON DIACETYL.**

6 (a) INTERIM STANDARD.—

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

13 (A) to all locations in the flavoring manu-
14 facturing industry that manufacture, use, han-
15 dle, or process diacetyl; and

16 (B) to all microwave popcorn production
17 and packaging establishments that use diacetyl-
18 containing flavors in the manufacture of micro-
19 wave popcorn.

20 (2) REQUIREMENTS.—The interim final stand-
21 ard required under subsection (a) shall provide no
22 less protection than the recommendations contained
23 in the NIOSH Alert “Preventing Lung Disease in
24 Workers Who Use or Make Flavorings” (NIOSH
25 Publication 2004–110) and include the following:

1 (A) Requirements for engineering, work
2 practice controls, and respiratory protection to
3 minimize exposure to diacetyl. Such engineering
4 and work practice controls include closed proc-
5 esses, isolation, local exhaust ventilation, proper
6 pouring techniques, and safe cleaning proce-
7 dures.

8 (B) Requirements for a written exposure
9 control plan that will indicate specific measures
10 the employer will take to minimize employee ex-
11 posure; and requirements for evaluation of the
12 exposure control plan to determine the effective-
13 ness of control measures at least on a biannual
14 basis and whenever medical surveillance indi-
15 cates abnormal pulmonary function in employ-
16 ees exposed to diacetyl, or whenever necessary
17 to reflect new or modified processes.

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

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

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

1 (F) Requirements to provide written safety
2 and health information and training to employ-
3 ees, including hazard communication informa-
4 tion, labeling, and training.

5 (3) EFFECTIVE DATE OF INTERIM STAND-
6 ARD.—The interim final standard shall take effect
7 upon issuance. The interim final standard shall have
8 the legal effect of an occupational safety and health
9 standard, and shall apply until a final standard be-
10 comes effective under section 6 of the Occupational
11 Safety and Health Act (29 U.S.C. 655).

12 (b) FINAL STANDARD.—Not later than 2 years after
13 the date of enactment of this Act, the Secretary of Labor
14 shall, pursuant to section 6 of the Occupational Safety and
15 Health Act (29 U.S.C. 655), promulgate a final standard
16 regulating worker exposure to diacetyl, if at such time,
17 diacetyl is still being processed or utilized in facilities sub-
18 ject to such Act. The final standard shall contain, at a
19 minimum, the worker protection provisions in the interim
20 final standard, a short term exposure limit, and a permis-
21 sible exposure limit that does not exceed the lowest fea-
22 sible level, and shall apply at a minimum to all facilities
23 where diacetyl is processed or used.

1 **SEC. 4. STUDY AND RECOMMENDED EXPOSURE LIMITS ON**
2 **OTHER FLAVORINGS.**

3 (a) STUDY.—The National Institute for Occupational
4 Safety and Health shall conduct a study on food flavorings
5 that may be used as substitutes for diacetyl and shall
6 transmit a report of the findings of the study to the Occu-
7 pational Safety and Health Administration.

8 (b) CONSTRUCTION.—Nothing in this section shall be
9 construed as affecting the timing of the rulemaking out-
10 lined in section 2.

Passed the House of Representatives September 26,
2007.

Attest:

LORRAINE C. MILLER,

Clerk.

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1ST Session

H. R. 2693

AN ACT

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

SEPTEMBER 28, 2007

Read the second time and placed on the calendar