Baca
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Baird
Baker
Baldwin
Barrett (SC)
Barrow
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Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono
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Boswell
Boucher
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Braley (IA)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
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Burgess
Burton (IN)
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Buyer
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Camp (MI)
Campbell (CA)
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Chabot
Chandler
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Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Conyers
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Cummings
Davis (AL)
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Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
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Doolittle
Doyle
Drake
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Emanuel
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Inslee
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Issa
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Kingston
Kirk
Klein (FL)
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LaHood
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
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Linder
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Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
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McCarthy (CA)
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McCollum (MN)
McCotter
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McGovern
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McHugh
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Miller, Gary
Miller, George
Mitchell
Mollohan
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Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
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Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
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Obey
Ortiz
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Pastor
Pearce
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
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Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stearns
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Tierney
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Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Wasserman Schultz
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Weller
Westmoreland
Wexler
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Wilson (NM)
Wilson (OH)
Wilson (SC)
Wolf
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Wynn
Yarmuth
Young (AK)
Young (FL)

NOES—14

Blumenauer
Clay
Ellison
Filner
Frank (MA)
Hinchey
Kucinich
Lee
McDermott
Paul
Payne
Waters
Watson
Woolsey

NOT VOTING—14

Bachus
Carson
Cubin
Davis, Jo Ann
Gordon
Herger
Hinojosa
Jindal
Johnson, E. B.
LaTourette
Olver
Royce
Souder
Sutton

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1244

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. LATOURETTE on rollcall No. 911, I was unavoidably detained. Had I been present, I would have voted "aye."

GENERAL LEAVE

Mr. GEORGE MILLER of California. Mr. Speaker, I request 5 legislative days for Members to revise and extend their remarks and insert materials on H.R. 2693 into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

POPCORN WORKERS LUNG DISEASE PREVENTION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 678 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2693.

□ 1245

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2693) to direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl, with Mr. CARDOZA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from California (Mr. GEORGE MILLER) and the gentleman from California (Mr. MCKEON) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman and Members of the House, today we have an opportunity to protect thousands of American workers from a serious, irreversible and deadly lung disease known as ''popcorn lung,'' a disease caused by a simple artificial butter flavoring chemical called diacetyl.

The alarm bells began ringing on this health crisis over 7 years ago when a Missouri doctor diagnosed several workers from the same popcorn production plant with this debilitating lung disease. In 2002, the National Institute for Occupational Safety and Health linked the lung disease to exposure to diacetyl used in the plant.

Scientists have called the effect of diacetyl on workers' lungs ''astonishingly grotesque'' and likened it to ''inhaling acid.'' Hundreds of workers in popcorn and flavor production have become ill, several have died of popcorn lung, and many of the workers are so sick they needed lung transplants. Dozens of workers have sued flavoring manufacturers, winning millions in lawsuits and settlements.

NIOSH first connected popcorn lung to this chemical in 2002. In 2003, NIOSH issued guidance recommending that workers' exposure be minimized. In 2004, the Food Extract Manufacturers Association, the trade association of the flavoring industry, issued similar guidelines. Yet 5 years later, the Occupational Safety and Health Administration has failed to issue a standard to protect workers from exposure to diacetyl, preferring to rely on voluntary efforts.

Voluntary efforts, however, have not worked. Last year, California researchers found that despite the issuance of government and industry guidance for years before, many of those recommendations still have not been implemented in the flavor manufacturing facilities, and new cases of this debilitating lung disease have been identified.

How does this bill address the problem? H.R. 2693 would require OSHA to issue an interim final standard to minimize worker exposer to diacetyl. The

standard would contain provisions of engineering controls, respiratory protection, exposure monitoring, medical surveillance and worker training. The interim standard applies to popcorn manufacturing and packaging, as well as the food flavoring industry.

OSHA would then be required to issue a final standard within 2 years. This final standard would apply to all locations where workers are exposed to diacetyl and would include permissible exposure limit.

This bill should not be controversial. It is not another battle between workers and business about safety issues and alleged burdens of regulations. Over the past several months, we have built a wide coalition around this legislation from all sides, including industry, labor and scientists. The Flavor and Extract Manufacturers Association, the association representing the companies that make these flavorings, has joined with the unions that represent the affected workers to strongly support this legislation.

In fact, the only outside dissenters from this coalition are the usual anti-OSHA ideologues spouting the same old ''sky is falling'' rhetoric about regulations. Such rhetoric may be music to the ears of the OSHA-hating ideologues in search of a talking point, but in the real world, this ideology leaves workers and their families to suffer from the preventable scourges of toxic chemicals.

There are many reasons why industry, labor and scientists agree on this legislation. They all agree that we don't need to wait any longer to act; indeed, we can't afford to wait. I have a list of almost 30 major studies and reports showing that diacetyl destroys workers' lungs. They agree that we know how to protect workers. The National Institute for Occupational Safety and Health issued guidelines in 2003 laying out the basic measures that industry can take to prevent worker exposure to diacetyl. In 2004, the Flavor and Extract Manufacturers Association outlined in even greater detail the measures that members can take to prevent the employees from getting sick.

This legislation is straightforward and merely requires that OSHA do what it could have done and should have already done, issue an emergency standard. There is precedent for this bill and for Congress stepping in when OSHA falters in its mission to protect American workers. In 1986, 1990, 1991, 1992 and 2000, Congress moved to require OSHA to issue health and safety standards.

Earlier this month, in response to a report that a consumer of microwave popcorn has contracted popcorn lung, a few popcorn manufacturers have announced that they intend to stop using diacetyl. This is welcome news. It highlights how serious this issue is, but it is not enough. Workers are still at risk because diacetyl will continue to be used in a variety of other food products. We can't wait for consumers to get sick and hit the companies in their pocketbooks before the industry changes. Workers are getting sick now, and have for many years, and will continue to get sick unless we act. Workers cannot wait any longer for our help.

In the past several years, we've seen hundreds of workers become sick from exposure to diacetyl, and we've heard about young workers who need lung transplants, who are not expected to live to see their small children grow up.

It is time for us to act. OSHA has failed over 5 years. They've been on notice to do this, they have failed to do this. The only time they have shown any movement is when we've called a hearing or had some congressional action, they have responded to it.

The time has come for Congress to act and pass this legislation and stop ignoring the needs of these workers' health and safety. And it's time to get OSHA to do the job that they were constituted to do, and that is, to protect these workers and their families from this preventable exposure to diacetyl as the toxic substance that it has become.

Mr. Chairman, I reserve the balance of my time.

Mr. MCKEON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, earlier this year, the Subcommittee on Workforce Protections held a hearing that explored, among other things, the question of whether and how the flavoring compound diacetyl should be regulated by OSHA. We heard from an individual suffering from lung impairment that could well have been developed as a result of his manufacturing popcorn, during which he was exposed to high concentrations of diacetyl and numerous other chemicals.

There are many questions about this particular chemical. In fact, a number of large popcorn manufacturers recently announced voluntary steps to curb the use of diacetyl while its effects on worker health are studied.

The bill before us calls for a much more drastic response to the concerns about this chemical. It would require OSHA to set an interim final standard relating to diacetyl exposure within 90 days of passage, to be followed by a final rule within 2 years. This directive is, without a doubt, a well-intended effort to prevent illness that may be caused by this particular substance. Unfortunately, despite its good intentions, this bill has the potential to cause great harm.

I recognize that my colleagues on the other side of the aisle wish to do something to respond to the questions about this chemical. I also understand their frustration about a lack of action by the administration. Candidly, I share some of that frustration. It is my understanding that just this week the administration announced plans to implement rule-making for diacetyl exposure; this, despite the fact that Congress has been looking into these concerns for months and until this week had not received clear, unambiguous direction from the administration other than a letter written by the OSHA administrator expressing serious concerns about the implications of the bill.

From the outset of this process, I have been concerned about the lack of scientific data available to guide our actions. Without the necessary scientific understanding of this chemical, we cannot possibly develop the appropriate guidelines to protect workers. At this point, we still do not even know whether diacetyl alone, or in conjunction with other chemicals, is responsible for the condition known as popcorn lung.

Because of my concerns about a lack of scientific data, and because I'm uneasy about short-circuiting the proven regulatory process, I raised concerns about this bill when it was considered in committee. It's my position that the administration should be allowed adequate time to complete necessary scientific investigation before developing new standards.

I was, at the outset, and I remain, concerned that such a rushed response to questions about this substance make for better politics than policy. That is why I was so surprised, and frankly, disappointed, to learn that only now has the administration suddenly chosen to take action. They announced on Monday their intent to initiate rulemaking, issue a Safety and Health Information Bulletin, and provide Hazard Communication Guidance.

The administration's actions in this case, and their lack of communication with Congress, have done nothing to shed light on this issue of concern to us all. Instead, it has resulted in confusion about what is being done to address this issue and when they and we can expect to have answers. In fact, if the administration had simply been forthright with Congress about its plans, we might not be here considering this questionable legislation at all.

During committee consideration, Republicans offered an alternative. Our plan, which we will offer as an amendment today, strikes a balance between acting quickly to protect workers while relying upon sound science to establish a comprehensive regulation.

The Republican plan would maintain the 90-day deadline for establishing an interim final rule. Under this rule, guidance would be provided so that manufacturers could take immediate steps to limit exposure through the use of engineering improvements, ventilation and other strategies to protect workers. Our plan would also maintain the requirement that a final rule be developed, including a permissible exposure limit.

Under our alternative, this would be required within 2 years after the National Institute for Occupational Safety and Health concludes that the

standard can be supported by solid scientific evidence.

In short, the amendment maintains the same time frame for immediate protection, while eliminating the arbitrary nature of the final rule in favor of a timeline based on the availability of scientific evidence.

I want to reiterate my deep concern for the workers who have become ill. It is my goal, and surely the goal of everyone here, to determine as soon as possible what caused their illness and what can be done to prevent future occurrences.

Mr. Chairman, I opposed this bill in committee because I felt it did not allow for adequate scientific study. I also believed it undermined the longstanding regulatory process. However, I strongly support the effort to protect workers, and I can understand why Members on both sides of the aisle would wish to vote in favor of this measure.

As for me, until we can clear up the confusion surrounding this bill, I will reluctantly oppose it. I continue to believe this legislation undermines sound scientific and regulatory processes, but I will keep an open mind as this bill progresses through the legislative process. If further scientific evidence is uncovered as this bill moves to the Senate and to the President, my position could change. I only wish the administration had acted sooner and we could have been spared this debate entirely.

With that, I reserve the balance of my time and I yield the balance of my time to the gentleman from South Carolina, the ranking member on the subcommittee, and ask unanimous consent that he be allowed to control that time (Mr. WILSON).

The CHAIRMAN. Without objection, the gentleman from South Carolina will be recognized.

There was no objection.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself 1 minute.

I certainly appreciate the situation my ranking member, Mr. MCKEON, from California finds himself in, and I appreciate his remarks about the actions of OSHA in this situation.

The fact is that, again, earlier this month, in a commentary of the Dutch study on diacetyl workers which found it is unlikely that any other chemical is responsible for these cases, NIOSH scientist, Dr. Catherine Kreiss, wrote ''the collective evidence for diacetyl causing respiratory hazards supports actions to minimize exposure of diacetyl even if contributions by other flavoring chemicals exist.''

□ 1300

That is the situation we find ourselves in. This isn't a desire to rush to legislation. The fact is, as Mr. MCKEON pointed out, on this side of the aisle also we are all terribly disappointed by the failure of OSHA to engage this problem and to engage the people who are coming forth now supporting this legislation to construct a solution.

I yield 5 minutes to the gentlewoman from California (Ms. WOOLSEY), who is the Workforce Protections Subcommittee Chair and who has handled this legislation.

Ms. WOOLSEY. Thank you, Chairman MILLER, for this bill and for the work you do for all working Americans.

Mr. Chairman, I am truly sorry that Mr. MCKEON can't support it. But I am proud to be the sponsor of H.R. 2693, the Popcorn Workers Lung Disease Protection Act, which requires OSHA to issue an emergency temporary standard to regulate workers' exposure to diacetyl, a chemical used in butter flavoring for microwave popcorn and other food products. It is a travesty that OSHA has done nothing to regulate this chemical while workers have fallen seriously ill and have actually died.

In 1977, Congress passed OSHA to provide every working man and woman in the Nation a safe and healthful workplace. We gave the new agency charged with the administration the full name of the Occupational Safety and Health Act.

We also gave them important tools to enforce the provisions of the law. One of the most important functions that OSHA is charged with is to develop health and safety standards. When it was exercised, this function actually saved the lives and health of many, many workers.

For example, in 1978, when OSHA's cotton dust standard was adopted, there were 40,000 cases of brown lung disease annually, affecting 12 percent of all textile workers. Because of OSHA, brown lung was virtually eliminated. OSHA's 1978 standard on lead dramatically reduced lead poisoning.

Sadly, Mr. Chairman, there are still millions of workers who suffer from injuries and illnesses while working. One of the most grievous examples of this are workers who are contracting popcorn lung disease from exposure to a chemical called diacetyl used in the manufacture of microwave popcorn and other foods.

The Workforce Protections Subcommittee held a hearing on OSHA standards in April. We heard from Eric Peoples, a former microwave popcorn worker, who has popcorn lung. Eric is in his thirties. He has a young family. He worked in a microwave popcorn facility in Missouri for less than 2 years. After that, he had to stop work because he had contracted popcorn lung disease. Popcorn lung is an irreversible and life-threatening respiratory disease. Eric has lost 80 percent of his lung capacity, is awaiting a double lung transplant, and faces an early death, all because he was exposed to diacetyl.

A standard regulating exposure of diacetyl is currently needed. While OSHA has known about the dangers of the chemical for years, it has failed. It has failed day after day, year after year to act to make this standard an actual reality. In fact, OSHA has done virtually nothing to protect workers against diacetyl.

Now there has been at least one or two other reported cases of popcorn lung in consumers. Wayne Watson, a 53-year-old man from Colorado, has been diagnosed with popcorn lung due to his daily consumption of microwave popcorn over a 10-year period.

In addition, the Seattle Post-Intelligencer reported that a 6-year-old child, the son of a popcorn plant employee who has popcorn lung, was showing signs of the disease himself. In that case, when the popcorn plant closed, the company told the employees they could help themselves to any of the company's products. The father took home some butter-flavored oil containing diacetyl and used it for frying food. As a result, this 6-year-old child was exposed to the chemical, and it made him sick.

These are unintended and unfortunate consequences when OSHA refuses to act to protect workers.

This is true, Mr. Chairman, even though the Flavor and Extract Manufacturers' Association, the industry that represents the food flavoring manufacturers, issued a report warning of the dangers to workers from exposure of diacetyl and recommended measures controlling that chemical.

OSHA does not seem moved to meaningful action, even though four of the Nation's biggest popcorn makers have recently announced that they are working to remove diacetyl from their products. In my own State of California, CalOSHA is currently working on a standard to regulate diacetyl.

There is a whole list of agencies that I will enter into the RECORD that are supporting the regulation of diacetyl.

So, Mr. Chairman, now is the time for this Congress to stand up for the Nation's workers and vote to pass H.R. 2693.

The American Industrial Hygiene Association, the American College of Environmental and Occupational Medicine, the AFL–CIO, the United Food and Commercial Workers, the Teamsters, the Bakery and Confectionary Workers, the American Public Health Association and the American Society of Safety Engineers also support H.R. 2693.

Mr. WILSON of South Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, when I looked at the issue of diacetyl in manufacturing during the debate in committee, the answer seemed very clear to me at the time: proper ventilation. Even though it is unclear what is affecting manufacturing workers, all the experts agree that engineering controls, such as ventilation, reduce worker exposure.

I take very seriously lung illness. For nearly 10 years, I served on the State board of the South Carolina Lung Association. In the South Carolina State Senate, I introduced innovative legislation promoting clean air.

Fundamentally, the science does not exist to state a link between diacetyl

and impaired lung function. Indeed, last year, the National Institute for Occupational Safety and Health, NIOSH, noted, ''At this time, insufficient data exists on which to base workplace exposure standards or recommended exposure limits for butter flavorings.''

Unfortunately, this bill goes beyond the issue of what is known. The underlying bill requires the Occupational Safety and Health Administration, OSHA, to set a standard based on documents that OSHA informs us cannot guide rulemaking. These documents provide guidelines of how to solve the problem at issue but are not the foundation for a rule.

More research is currently under way to determine a connection between diacetyl and this respiratory condition. I fully support that research moving forward. In fact, the underlying measure contains an amendment I offered during the committee consideration of the bill to require NIOSH to study similar flavorings to determine possible exposure hazards with flavorings similar to diacetyl. Until there is conclusive evidence, it remains to be seen if diacetyl alone is to blame or whether the chemical, in combination with the other flavorings, places workers at risk.

On June 18, Assistant Secretary of Labor for Occupational Safety and Health, Edwin Foulke, a distinguished attorney from Greenville, South Carolina, of the highest integrity, reiterated this in a letter to Congress, in which he stated, ''Focusing on diacetyl ignores the possibility that other flavoring components, many of which are irritants and airway-reactive substances, are playing a role in the development of disease. Given the wide variety of ways and forms in which diacetyl and other flavoring components are used in the food manufacturing industry, a narrow focus on diacetyl would likely result in the selection of risk-management strategies that may not adequately protect employees.''

This is a critical point. Until we know the true cause of this lung impairment, I do not see how we can effectively legislate on it. Further, major manufacturers, using this flavoring have already announced they will no longer be using diacetyl.

The lack of scientific foundation is, unfortunately, not the only problem with the bill before us. There are numerous flaws outlined by the OSHA administrator's letter. Further, the President has announced strong opposition to the bill, largely because it is flawed. Undermining the rulemaking process, as this bill does, would almost certainly exclude input from key stakeholders that often proves imperative for a balanced rulemaking process.

Because this bill fails to allow time for appropriate scientific research and because it undermines the proven regulatory framework, I fear it will not do enough to protect workers.

Mr. Chairman, my amendment that was made in order would resolve much of this problem.

DEPARTMENT OF LABOR,
Washington, DC, June 19, 2007.

Hon. GEORGE MILLER,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: I am writing to express my strong concerns with legislation (H.R. 2693) that would require the promulgation of an interim final standard (IFR) regulating employee exposure to diacetyl in the popcorn and flavor manufacturing industries and mandate that the Occupational Safety and Health Administration (OSHA) issue a final rule covering all workplaces that use diacetyl.

I share your goal of protecting workers from the risk of obstructive lung disease. As outlined below OSHA is in the process of taking important steps to strengthen worker protections in this area. However, after careful review of this legislation, we have concluded that the regulatory approach mandated by H.R. 2693 will not afford the best level of protection for workers. Equally important, the process the bill would require may result in missed opportunities to provide needed worker safety. Instead, I urge you to allow OSHA to thoroughly evaluate all available science concerning the effects of exposures to food flavorings, feasible abatements and related issues.

Several considerations lead us to the conclusion that the approach mandated by H.R. 2693 would not best protect workers:

1. The expanded scope of the final rule and the lack of knowledge about the industries that use diacetyl will lead to superficial analysis that may fail to provide needed worker protection.

H.R. 2693 would require OSHA to expand the scope of the final rule to include all establishments where there is potential for exposure to diacetyl. Unfortunately, little is known about industries—other than the microwave popcorn manufacturing and food flavoring manufacturing industries—that use diacetyl and diacetyl-containing flavorings. OSHA would need to identify those companies that use diacetyl then conduct site visits to gather needed data to (1) identify processes where exposures occur, (2) develop control strategies for each process, and (3) identify employers who have implemented control strategies to determine if those control strategies are effective. Although OSHA has been obtaining this information for microwave popcorn and food flavoring manufacturing establishments, to date little information is available on the many other industry sectors that would potentially be covered by the final role required by the bill. OSHA believes that two years is too short a period of time to develop the information base and analysis necessary to adequately support the proposed and final role, and to afford the public adequate time to comment on OSHA's proposal. The Agency believes that robust public input is essential to achieving a final rule that provides protection for employees while addressing potential impacts on all affected industries.

2. Focusing solely on a Permissible Exposure Limit (PEL) for diacetyl may ignore other components that are playing an important role in the development of disease.

H.R 2693 requires OSHA to develop a PEL for diacetyl that would apply to all facilities where diacetyl is processed or used. Research is ongoing by groups such as the National Institute for Occupational Safety and Health (NIOSH), the National Jewish Medical Center, the National Institute for Environmental Health Studies and California Department of Industrial Relations, Division of Occupational Safety and Health (Cal OSHA) to better determine the role that exposures to diacetyl and other chemicals may play in the development of bronchiolitis obliterans.

By focusing solely on diacetyl, H.R 2693 raises two major concerns:

a. Focusing on diacetyl ignores the possibility that other flavoring components—many of which are irritants and airway-reactive substances—are playing a role in the development of disease. Given the wide variety of ways and forms (e.g., liquids or powders) in which diacetyl and other flavoring components are used in the food manufacturing industry, a narrow focus on diacetyl would likely result in the selection of risk management strategies that may not adequately protect employees. These might include substitution of diacetyl with other chemicals that may be as dangerous under similar circumstances as diacetyl.

b. NIOSH has stated that ''at this time, insufficent data exist on which to base workplace exposure standards or recommended exposure limits for butter flavorings.'' Given the state of the data currently available, OSHA would only be able to develop an imprecise PEL for diacetyl which would have a considerable amount of uncertainty associated with respect to the degree of protection afforded.

3. As drafted the bill would require the interim final rule to impose engineering requirements based on NIOSH recommendations that lack the clarity and specificity necessary to form the basis of a new health standard.

H.R. 2693 would direct OSHA to issue an interim rule at least as stringent as the 2004 NIOSH Hazard Alert. The NIOSH recommendations serve as good general recommendations, but do not provide specific performance criteria that would be necessary to develop an unambiguous and enforceable interim rule. The NIOSH Alert refers to the 2001 ACGIH Ventilation Manual, which provides some general objective design criteria, but mixing and blending processes in flavoring establishments vary greatly. For example, they can range from a 10-gallon batch operation up to several hundred pounds of batch mixing. Each of these operations may use similar control strategies but would require different engineering design parameters to achieve the same level of effectiveness. Therefore, the NIOSH Hazard Alert is not helpful to specify required minimum operating parameters for engineering controls because these minimum parameters will not provide equal protection to all employees in affected establishments. Furthermore, there is simply not enough information available at this point on flavoring processes and current exposure control practices to develop a specification-oriented standard.

OSHA traditionally has used PELs instead of specification-oriented standards to protect workers in this type of situation, because a PEL will set a precise, measurable standard to protect workers. However, as previously mentioned, currently available data do not support setting a PEL for diacetyl. Thus, OSHA would be forced by H.R. 2693 to issue a PEL based on imprecise information and an IFR based on a NIOSH Hazard Alert that does not provide specific performance criteria.

Additionally, the Department of Labor is very concerned that the IFR that is mandated by this legislation will not be open for comment by stakeholders, or reviewed in accordance with the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Administrative Procedures Act, and the rulemaking requirements of the Occupational Safety and Health Act These statutes ensure thorough consideration and transparency in rulemaking. We do not believe these regulatory requirements

should be waived except in the most exceptional situations. Thorough vetting is particularly critical when the medical and scientific studies do not provide unequivocal conclusions.

The Department of Labor is committed to protecting employees from obstructive lung diseases. The Department recently announced that OSHA win focus on health hazards of microwave popcorn butter flavorings containing diacetyl through a new National Emphasis Program (NEP). The NEP will direct inspections to the facilities where workers may be at the greatest risk of exposure to this hazard. Implementation of this NEP would allow OSHA to inspect every such facility under Federal jurisdiction by the end of this year. This will be followed by a second NEP that focuses on establishments manufacturing food flavorings containing diacetyl.

In addition to the NEP, OSHA is also preparing a Safety and Health Information Bulletin (SHIB) to better inform and instruct employers on how to protect employees from obstructive lung disease caused or exacerbated by food flavorings used in the microwave popcorn manufacturing industry. The SHIB will provide guidance to alert employers and workers to the potential hazards associated with butter flavorings containing diacetyl and will provide recommendations on how to control these hazards. OSHA is also developing a hazard communication guidance document to ensure that material safety data sheets and labels properly convey hazard information on diacetyl and diacetyl-containing food flavorings. Given that NIOSH has stated that insufficient data exist on which to base workplace exposure standards or recommended exposure limits for butter flavorings the approach we are taking is the quickest and most effective means of providing protection to workers in the popcorn and flavor manufacturing industries.

Because of the concerns I have outlined, the Department of Labor is opposed to H.R 2693. We have concluded that the approach proposed by H.R. 2693 will not afford the best level of protection for workers. By not providing sufficient time to do a proper rulemakin OSHA may unintentionally overlook opportunities to provide needed worker safety and, at the same timel require expensive process isolation, and ventilation and other control strategies that may be ineffective. Instead, I urge you to allow OSHA to thoroughly evaluate all available science concerning the effects of exposures to food flavorings, feasibie abatements, and related issues.

Sincerely,

EDWIN G. FOULKE, Jr.,
Assistant Secretary for Occupational Safety and Health.

Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Chairman, I thank the chairman for yielding.

I rise in support of this legislation. In 2002, 5 years ago, NIOSH, the National Institute for Occupational Safety and Health, discovered a link between a dreadful disease called popcorn lung that literally eats away at the tissue of a man or a woman's lung and diacetyl. A lot has happened in the 5 years since then. Hundreds of people have been severely sickened. A significant number of people have died.

In 2003, NIOSH recommended that manufacturers using diacetyl adopt certain standards to protect workers against popcorn lung disease.

In 2004, the Flavor and Extract Manufacturers Association, the trade association of the affected industry, voluntarily adopted certain recommendations that employers and manufacturers do what they could to protect workers against popcorn lung. Very recently, under the leadership of Subcommittee Chairwoman WOOLSEY, who called attention to the issue, the Subcommittee on Workforce Protections drafted a piece of legislation.

Some good things happened. The Flavor and Extract Manufacturers Association said, ''We agree with the legislation. We want OSHA to act to protect these workers as a matter of law, not a matter of courtesy.''

The Flavor and Extract Manufacturers Association was joined by the industrial hygienists, the experts in this matter, by the physicians, the American College of Environmental and Occupational Medicine, by the public health experts, the American Public Health Association, by the voice of organized labor, the AFL–CIO, the United Food and Commercial Workers Union, the Teamsters, the Bakery, Confectionary, Tobacco Workers and Grain Millers Union and the American Society of Safety Engineers.

So, the manufacturers agree that OSHA ought to act, the physicians agree that OSHA ought to act, the industrial hygienists agree that OSHA ought to act, the labor unions agree that OSHA ought to act, and the American Association of Safety Engineers agrees that OSHA ought to act. All these things have happened in the last 5 years. But one thing has not happened. OSHA has not acted. So, today, we will act.

This is a case of administrative malpractice. This is a case of an administrative agency that is given the responsibility under the law to protect working Americans. After 5 years of evidence, after the unanimous judgment of doctors, hygienists, the trade association, organized labor, after 5 years of unanimous judgment that it is time for OSHA to act, OSHA still has not acted.

Now, the normal course, Mr. Chairman, is to wait for the administrative agency to make up its mind. We have already followed that course. We have waited for 5 years as hundreds of people have been sickened and a significant number of people have passed on. The time to wait is over. The time to act is now.

I urge our Republican and Democratic colleagues to join with doctors, industrial hygienists, the manufacturers association, organized labor, and the Public Health Association and say to OSHA, stop this administrative malpractice. Enact a standard and protect these workers against this dreadful disease.

I would like to congratulate Chairman WOOLSEY, Chairman MILLER and the other leaders in this effort and urge a ''yes'' vote.

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Mr. WILSON of South Carolina. Mr. Chairman, I include for the RECORD letters in opposition from the American Bakers Association, dated September 25, 2007; the OSHA Fairness Coalition, September 25, 2007; and the Office of Management and Budget, dated September 25, 2007.

AMERICAN BAKERS ASSOCIATION,
Washington, DC, September 25, 2007.

Hon. HOWARD MCKEON,
House of Representatives,
Washington, DC.

DEAR MR. MCKEON: On behalf of the American Bakers Association (ABA), I am writing to express our opposition to H.R. 2693, ''the Popcorn Workers Lung Disease Prevention Act,'' which the House of Representatives is expected to consider this week. Passage of H.R. 2693 would significantly short circuit the appropriate regulatory process by mandating that the Occupational Safety and Health Administration (OSHA) implement a regulation, including a Permissible Exposure Limit (PEL), applicable to all sectors of the food industry, and based on limited scientific data. For over 100 years, the ABA has represented the interests of the wholesale baking industry and its suppliers—companies that work together to provide over 80 percent of the wholesome and nutritious bakery products purchased by American consumers.

The American Bakers Association prides itself on our long history of assisting baking companies to stay ahead of the curve on safety and health in the workplace. Our Safety Committee provides tremendous leadership on safety and health policy issues. We are committed to keeping our workers safe and support science-based standards and regulations. The ABA is aware of recent data from the National Institute for Occupational Safety and Health (NIOSH) regarding the use of diacetyl in popcorn manufacturing and the flavor manufacturing industry. We also understand the severity of the health effects that have been demonstrated in a limited number of cases. However, we strongly believe that the recent NIOSH data does not accurately reflect the use of diacetyl in other sectors of the food industry, such as baking. Differences exist in the food processing industry, the concentrations of diacetyl used, and the existing controls in place.

Mandating specific requirements that OSHA must include in a diacetyl standard sets a precedent that should be avoided. Congress's role as set forth in the OSH Act of 1970 is to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' However, it is the role of the Department of Labor to use its expertise for implementing regulations. For Congress to specify the applicable requirements of a ''final standard'' would bypass inappropriately the mechanisms and tests established under the OSH Act. Expedited regulation, even if directed by Congress, would rest on very limited scientific evidence and would represent rushed and inappropriate legislative and Agency action.

Further H.R. 2693 does not address the carefully developed procedures for rulemaking that Congress and the courts have put in place under the Administrative Procedures Act (APA), including provisions designed to protect small businesses. Finally, on September 24, 2007 OSHA announced its intent to move forward with a rulemaking

on diacetyl. This rulemaking process should be allowed to move forward as it includes the appropriate procedural safeguards.

ABA respectfully urges you to oppose this legislation and allow the regulatory procedures designed to protect the interests of small businesses to guide OSHA in developing a standard.

Sincerely,

ROBB MACKIE,
President and CEO.

OSHA FAIRNESS COALITION

TO THE MEMBERS OF THE HOUSE OF REPRESENTATIVES: We write to inform you of our strong opposition to H.R. 2693, ''the Popcorn Workers Lung Disease Prevention Act,'' which the House of Representatives is expected to consider this week. The bill 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, most notably microwave popcorn) even though the science and data available are insufficient to allow OSHA to establish an exposure limit. Such a mandate would be completely at odds with all other laws, judicial decisions, executive orders and sound policy considerations under which OSHA promulgates standards and regulations.

This bill mandates that OSHA issue an interim final regulation within 90 days of enactment, and then a final regulation which would include a short term exposure limit and a permissible exposure limit, within two years of enactment. Unfortunately, data does not currently exist as to where these lines could be drawn. The very NIOSH document cited in the bill for support 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 mandates that OSHA 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 as contained in Section 6 of the Occupational Safety and Health Act, and the Administrative Procedure Act including specific provisions designed to protect small businesses. Because regulations have a much different and more significant impact on small businesses, adhering to the strict rulemaking guidelines of the APA are that much more important to small businesses. The normal OSHA rulemaking process allows for regulatory impacts on small businesses (which according to the Small Business Administration are 50 percent higher than they are for large firms) to be assessed, and for important changes to be made to proposed regulations mitigating those impacts. Shortchanging that process could be potentially devastating to those small businesses which provide 60 percent of all new jobs in the United States.

The interim final regulation specified by this bill, which would have the legal effect of an OSHA standard, would not be produced under any rulemaking procedures. Indeed, this bill attempts to write the interim final standard directly, bypassing OSHA's expertise and ability to tailor such a regulation to those circumstances where it is truly warranted. Under the bill the interim final standard would be issued without any analysis of its impact, or opportunity for those subject to it to provide comments or input, nor would it be subject to comments once issued as is customary for interim final rules. Because there is no data around which to formulate the short term exposure limit and permissible exposure limit, the two year timeframe specified for OSHA to issue the final regulation is too accelerated to permit the agency to conduct the necessary impact analyses and other small business-focused analyses that would normally accompany an OSHA rulemaking.

Finally, any need for this bill has been eliminated as a result of the world's largest producer of microwave popcorn, ConAgra Foods Inc., and another large manufacturer of microwave popcorn recently indicating their plans to eliminate diacetyl from their brands, and OSHA's announcement on September 24 that the agency will move forward with various measures to address the hazard of workplace diacetyl exposure including a rulemaking consistent with the full procedural safeguards.

H.R. 2693, while well intentioned, is ill conceived and would establish a devastating precedent of Congress mandating a regulation when there is no data available to use in setting the exposure limit, and trampling on regulatory procedure designed to protect the interests of small businesses. The Coalition urges the House not to pass H.R. 2693.

Sincerely,

American Bakers Association; Associated Builders and Contractors; International Food Distributors Association; National Association of Home Builders; National Oilseed Processors Association; NFIB; U.S. Chamber of Commerce; Plumbing-Heating-Cooling Contractors—National Association; American Foundry Society; Associated General Contractors; National Association of Convenience Stores; National Association of Manufacturers; Mason Contractors Association of America; and Printing Industries of America.

STATEMENT OF ADMINISTRATION POLICY, H.R. 2693—THE POPCORN WORKERS LUNG DISEASE PREVENTION ACT

(Rep. Woolsey (D) CA and 17 cosponsors)

The Administration strongly opposes House passage of H.R. 2693, ''Popcorn Workers Lung Disease Prevention Act,'' in its current form. H.R. 2693 would require the Department of Labor's Occupational Safety and Health Administration (OSHA) to publish a premature interim standard within 90 days of enactment regulating worker exposure to diacetyl and publish a final regulation that includes a permissible exposure limit (PEL) within two years. The bill also directs the National Institute for Occupational Safety and Health (NIOSH) to conduct a study to determine the potential exposure hazards of diacetyl and associated chemicals used in the production of microwave popcorn.

The Administration shares the goal of protecting workers from the risk of obstructive lung disease, and OSHA is already taking steps to strengthen worker protections in this area. These measures include: (1) Announcement of a regular rulemaking process under the Occupational Safety and Health Act to address occupational exposure to flavorings containing diacetyl; (2) inspections at every microwave popcorn manufacturing plant in the nation within the calendar year to ensure that acceptable ventilation and other engineering controls are in place and that appropriate personal protective equipment is in use; (3) issuance of a Safety and Health Information Bulletin that advises employers about diacetyl, recommends specific engineering and work practice controls to regulate exposures, and requires appropriate personal protective equipment and respiratory protection when handling diacetyl; and (4) issuance of a guidance document about health hazard information that must be included on diacetyl material safety data sheets under the Hazard Communication standard.

The Administration does not believe that H.R. 2693 in its present form is the best regulatory approach for protecting workers. Before a PEL can be promulgated, more time is needed to gather sufficient evidence concerning (1) the causes of bronchiolitis obliterans (''popcorn lung disease'') in workers exposed to diacetyl and other chemicals used in butter flavorings; (2) the range of exposure levels that may be hazardous; and (3) the kinds of control measures that are most effective. Additional time is also needed to obtain sufficient information about the many other industries besides microwave popcorn manufacturing that use diacetyl and diacetyl-containing flavorings. The expedited rulemaking required by H.R. 2693 would not allow OSHA sufficient time to gather and analyze the kind of evidence and information needed to ensure the promulgation of a standard that adequately protects workers.

The Administration is also very concerned that the interim standard that is mandated by this legislation will not be open for comment by stakeholders, particularly small business, in accordance with the Administrative Procedure Act, Small Business Regulatory Enforcement Fairness Act, and the rulemaking requirements of the Occupational Safety and Health Act. These statutes ensure thorough consideration and transparency in rulemaking, as well as stakeholder input. The Administration believes these requirements should be waived only in the most exceptional situations. Thorough vetting is particularly critical when the medical and scientific studies do not provide unequivocal conclusions.

Mr. Chairman, I yield such time as he may consume to the gentleman from Georgia (Mr. PRICE), an experienced physician.

Mr. PRICE of Georgia. Mr. Chairman, I thank my friend from South Carolina for his leadership on this, as well as so many other issues.

Mr. Chairman, I represent the Sixth District of Georgia, one that is interested actively in the input of Members of Congress and the actions of government. But they have some suspicion about the actions of government.

When I came to Congress, I was told a story by a former Member who told an amusing story about his sense that when Members of Congress get on the airplane and they head toward Washington to come to work, they think they are pretty smart folks. As they get closer to Washington, they think that their intelligence increases. As they begin to descend and come into Reagan National Airport, they really think they are getting mighty smart. And then once they step off the plane, they think they are the brightest people on the Earth.

I tell that because folks listening to this might be surprised that there actually is a process in place for rulemaking within OSHA. There is a process in place that maximizes workplace safety while it sets standards based upon the strongest and the most complete scientific information.

Now, today, the House of Representatives is considering a bill which bypasses this process, bypasses the process and sets a permissible exposure limit for diacetyl, making Members of Congress the ones who are the experts on scientific evidence.

As my friend mentioned, before I came to Congress, I was a physician. One of the things that concerned me greatly was that Members of Congress, many Members of Congress think that they know best about so many issues. One of them was how to practice medicine. In this instance, it's what the level of appropriate exposure for a worker in this Nation ought be for diacetyl.

Diacetyl is an artificial flavoring commonly used for popcorn. It has been determined to be safe for general consumption, but the inhalation, the breathing in of large quantities may be harmful, although there is not any evidence that demonstrates that it can be solely harmful to an individual, which is what this bill actually assumes or presumes.

You have heard talk about the National Institute of Occupational Safety and Health, NIOSH. NIOSH is the group that studies these kinds of things. In fact, they produced a study that concluded, ''There is insufficient data that exists on which to base workplace exposure standards or recommended exposure limits for butter flavorings.''

Those are the folks that are the scientists that are involved in setting standards. We ought to listen to their recommendation. I commend the author and I commend the individuals who want to push the process forward more rapidly. I think that's an appropriate thing to do. But by adopting this bill, Congress is effectively saying to OSHA that your rulemaking process doesn't make any difference, that we don't need to hear the folks who have the greatest amount of knowledge about an issue, and that Congress is about to set standards based upon incomplete scientific evidence.

Now that may not be of great concern to some, but it ought to be. It ought to be. Regulations of this nature should only be based on the most sound and thorough scientific data. Otherwise, Congress is coming back every 6 months, every year, every 2 years and revising what they have put in place because they haven't based their decisionmaking on appropriate scientific information.

If this legislation is to go forward, then I would encourage my colleagues to allow it to do so with the adoption of the Wilson amendment. This amendment would ensure that a final safety standard for diacetyl is in fact based on adequate scientific and complete review by NIOSH. The Wilson amendment will guarantee that the most effective worker protections are put in place with the backing of science rather than identifying one compound without complete information.

If the goal here is workplace safety, if the goal is workplace safety, then we ought to make certain that that safety, those guidelines, those regulations are put in place and done correctly. Members of Congress should have a critical eye on the OSHA rulemaking process, without a doubt. But it's important that we not implement mandates based upon incomplete scientific evidence and without all of the facts.

So, for those reasons, Mr. Chairman, I once again thank my colleague for his assistance and leadership in this area. I would urge adoption of the Wilson amendment, and if that does not occur, then I would urge defeat of the underlying bill.

Mr. WILSON of South Carolina. Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 4 minutes to the gentlewoman from New Hampshire (Ms. SHEA-PORTER).

Ms. SHEA-PORTER. Mr. Chairman, I thank my friend for yielding me time to speak on this important issue. As a cosponsor of H.R. 2693, I rise to express my very strong support of the legislation and to highlight the dangerous philosophy under which the current administration and, consequently, OSHA has been operating.

Beside me you see in print the philosophy of ''Guidance'' over standards and regulations. Just to be clear here, guidance is great, but it's terribly dangerous when it comes at the expense of enforceable standards. It is this issue that brings us to the floor today.

This Hazard Communications Guidance, which was released just on Monday, starts with a sort of disclaimer paragraph that begins by explaining, ''This guidance is not a standard or regulation and it creates no new legal obligations.''

It concludes with, ''Failure to implement any specific recommendations in this guidance is not in itself a violation of the General Duty Clause. Citations can only be based on standards, regulations, and the General Duty Clause.''

In fact, under this administration, OSHA has issued only one significant new standard, which was on the cancer-causing chemical hexavalent chromium, and this was done under court order.

This is an incredibly dangerous philosophy for workers nationwide who rely on the health and safety precautions that OSHA is charged with ensuring. OSHA's obligation to protect these workers is certainly not met by simply enforcing current standards while ignoring emerging dangers. OSHA has responsibility to promulgate new standards and protections as soon as we learn of the hazardous nature of such chemicals as diacetyl.

To my colleagues who would say that Congress should step back and let OSHA do its job, I say gladly. We will step back when OSHA steps up and fulfills its obligation to provide meaningful health and safety protections for our Nation's workers.

I urge my colleagues to support this legislation that will provide this meaningful protection. It does this by requiring OSHA to issue an interim standard and within 2 years to promulgate a final standard with respect to diacetyl. Our workers deserve this added safety. So do our families that use this product. This bill deserves our support.

Mr. WILSON of South Carolina. Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. BISHOP), a member of the committee.

Mr. BISHOP of New York. Mr. Chairman, I thank the chairman for yielding.

Mr. Chairman, I rise today in strong support of H.R. 2693, the Popcorn Workers Lung Disease Prevention Act. Millions of Americans enjoy the convenience of microwave popcorn. However, few are aware that those bags of popcorn may contain diacetyl, an artificial butter flavoring and a deadly chemical when inhaled in high levels.

You earlier heard about Eric Peoples from Chairman WOOLSEY who worked at the Jasper Popcorn Company. Mr. Peoples has the debilitating disease of popcorn lung and as a result has only 24 percent of his lung capacity. Everyday activities are no longer possible for him.

Another worker at the Jasper Popcorn Plant, Linda Redman, started working at the plant in 1995. Within 2 years, her breathing was so impaired that she had to quit. I believe that Eric and Linda's pain may have been prevented if OSHA had acted to issue a standard to limit workers' exposure to diacetyl. OSHA has still failed to issue a standard, even though it was some 7 years ago that it was determined that worker illnesses were related to the chemical diacetyl.

H.R. 2693 is a simple bill. It requires OSHA to issue an emergency interim standard within 90 days to protect workers at popcorn and flavoring manufacturing plants to minimize diacetyl, and it requires OSHA to then issue a final standard within 2 years. An emergency standard will help protect the thousands of workers who come into contact with diacetyl every day. The Flavor and Extract Manufacturers Association, the leading industry association for the flavoring industry, recommended similar actions as far back as 2004.

The simple and sad truth is that OSHA has failed to do its job, and thus in this case Congress must act to protect workers. These workers deserve a safe workplace.

As Eric Peoples said, ''I played by the rules. I worked to support my family.

This unregulated industry virtually destroyed my life. Please don't let it destroy the lives of others.''

So I ask Members to join me in promising that we won't stand by and let this industry destroy the lives of others. Let's pass H.R. 2693.

Mr. WILSON of South Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are considering this bill under unfortunate circumstances. A number of workers have become ill, and it is not entirely clear why. We suspect this particular food flavoring diacetyl may be involved, so we all support a thorough investigation into this substance and how exposure to it may impact workers.

Like my friends on the other side of the aisle, I wish there was an easy answer. If only we knew what had made these workers ill, we could immediately eliminate the risks. If only we knew for sure that diacetyl and manufacturing alone caused lung obstruction, then Federal agencies could go through the appropriate regulatory process to establish exposure limitations and take the necessary steps to protect workers.

Unfortunately, we do not have enough information at this point in time to take such action. Research is underway, and it is my hope that the research continues quickly so we can get to the bottom of these questions about how diacetyl impacts manufacturing workers.

Until that research is available and until we have a scientific basis for regulation, in my mind we simply cannot move forward. There is a very real danger that by acting too quickly, we could inadvertently push manufacturers to begin using substitute flavorings. There is a possibility that these substitute flavorings could also put workers at risk; thus, a hurried regulation may provide a false sense of security while manufacturing workers remain vulnerable.

Again, I understand the frustration about a lack of clarity on the administration's intent in this area. Until the recent announcement by the Department of Labor that it intends to undertake a rulemaking process for this flavoring, we had not received any clear indication from the administration that it intended to take action. As such, I believe some on the other side the aisle believed they had no choice but to act themselves.

Mr. Chairman, I recognize the difficulty we face. We have workers who have fallen ill and we do not know why. We have questions about a flavoring that workers are exposed to during manufacturing, but we do not know whether it is the sole cause of their ailments. We have a Federal regulatory agency that is responsible for ensuring workplace safety, but until this week we did not know whether the agency would act.

□ 1330

Republicans proposed a sensible alternative when this bill was considered in the committee, and we plan to do the same today. We want to balance our pressing desire to act quickly to protect workers with our equally important need to adhere to sound science.

Because I believe it undermines the basic regulatory framework and neglects the necessary scientific foundation, I regret I cannot support the bill in its current form. I hope my alternative will be adopted so that we can quickly increase evidence to guide the final rules to provide the strongest protections possible.

Mr. Chairman, I yield back the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman and Members of the House, this isn't about confusion. This isn't about uncertainty. This is about the absolute failure of a Federal agency that has been established and designed to protect the health and the safety of American workers, the Occupational Health and Safety Administration, and the absolutely failure of that agency to take action, the absolute failure of this administration, the Bush administration, to insist they take action in light of mounting and compelling evidence that workers in popcorn manufacturing facilities and workers maybe now in other food industries have been stricken with a horrible disease that has been directly related to diacetyl.

I appreciate they want to throw up all of the other reasons. Maybe it wasn't O.J., but the fact of the matter is, here it is diacetyl, and we have got to understand that because people are going in for lung transplants, people are losing their ability to earn a living, and people have died from the results of this, and manufacturers and others are paying out millions of dollars.

The other side wants to offer an amendment that is based upon very old information, 3 years old. In those 3 years, NIOSH has recommended that actions be taken. The actions were not taken. NIOSH based that on the information at that time.

Then the industry recommended that actions be taken to protect the lives and the health and the safety of these workers, and actions were not taken in many parts of that industry. And, lo and behold, on the day that we are arguing this bill on the floor, we find out that OSHA has finally taken action.

And what action has OSHA taken? It didn't take action in the absence of information. It specifically states that they are updating the material safety data sheets because they have to include newer health effects information, information they need to understand the hazards associated. The hazards associated.

This is OSHA as of today. OSHA couldn't figure it out yesterday, they couldn't figure it out last year or the year before or the year before. But because Congress is moving, they are now going to give people a data sheet that says diacetyl, in the data sheet from OSHA today, can cause damage to respiratory tract and lungs if inhaled, and it is highly flammable.

This isn't because we don't have information. This is because they refused to act earlier.

The gentleman from the other side wants to talk about the fact that they have put together a rulemaking process. No, what they announced was a one-day meeting, a one-day meeting of stakeholders, and then that was the end of it. We don't know whether they are going to go to the rest of the process or not. There is no indication in their past that they have.

They have forfeited their right to suggest that they will set the time and the tempo and the urgency of the protection of these workers and their families. They have forfeited that. We are stepping in here; and in the first interim standard we are asking NIOSH to do what they have already recommended that they do, based upon the evidence they have today. We are asking them to join with the manufacturers who have made these same recommendations based upon the evidence that they have today.

And what are they asking them to do? These are the first precautionary things that you do: Isolate the mixing room from the rest of the plant using walls, doors or other barriers; provide the mixing room with a separate ventilation system and ensure that negative air pressure relative to the rest of the plant is maintained in the mixing room. Yes, they are doing this because they have information that this can cause damage to your respiratory tracts and your lungs.

The other side wants to suggest in their amendment that if we just knew more, we could do better. It goes on and on.

They suggest reducing the operating temperature and holding the mixing tanks to the minimum temperature necessary, equipping the head space of the mixing and holding tanks with flavor added to oil and held in a pure form, automating the mixing process using closed processes to transfer flavorings. These are all designed to protect these workers, and they would not have happened but for this committee action, but for this floor time and this debate, and but for us voting this bill out of here.

This is the least we can do, to ask these agencies to do what was already recommended they should do in 2003, to do at least what the manufacturers have already recommended they do in 2004. And then we ask them to proceed with a permanent standard using their scientific evidence, their data, their knowledge, not ours. And that is the process by which these workers are going to get protection.

They are not going to get protection from the gentleman's amendment on the other side of the aisle, and they are not going to get it from stalling the Congress from going forward.

This is our opportunity to respond to an urgent medical crises in this industry by these workers and their families. I ask my colleagues to support this legislation when it comes time for final passage and to defeat the Wilson amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. HARE. Mr. Chairman, I rise in strong support of the Popcorn Workers Lung Disease Prevention Act. As a Member of the Education and Labor Committee I had the privilege of participating in a hearing at which Eric Peoples, a former microwave popcorn worker, testified. Mr. Peoples had contracted a respiratory disease from exposure to the butter flavoring chemical, diacetyl, during his work at the factory. I was appalled to find out that despite the mountain of evidence showing the links between diacetyl and respiratory damage comparable to inhaling acid, the workers were told this product was safe. Now, Mr. Peoples struggles with only 24 percent lung capacity and is waiting for a lung transplant.

OSHA is failing to protect workers from chemical hazards. According to the National Institute for Occupational Safety and Health, occupational diseases caused by exposure to chemical hazards are responsible for an estimated 50,000 deaths each year.

This bill does the job OSHA has failed to do. H.R. 2693 would require OSHA to issue an interim final standard to minimize worker exposure to diacetyl at popcorn manufacturing and packaging plants. OSHA would then be required to issue a final standard within 2 years that would apply to all locations where workers are exposed to diacetyl.

It is necessary for Congress to take this step to protect our workers. I urge my colleagues to stand with me in passing the Popcorn Workers Lung Disease Prevention Act.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2693

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.

The CHAIRMAN. No amendment to the committee amendment in the nature of a substitute is in order except those printed in House Report 110–349. Each amendment can be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

The CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 110–349.

Mr. GEORGE MILLER of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. GEORGE MILLER of California:

Page 6, line 21, insert '', if at such time, diacetyl is still being processed or utilized in facilities subject to such Act'' after ''diacetyl''.

Page 7, line 5, strike ''of'' and insert ''for''.

Page 7, line 7, strike ''used in the production'' and all that follows through ''NIOSH'' and insert ''that may be used as substitutes for diacetyl and''.

Page 7, strike lines 13 through 18 and insert the following:

(b) CONSTRUCTION.—Nothing in this section shall be construed as affecting the timing of the rulemaking outlined in section 2.

The CHAIRMAN. Pursuant to House Resolution 678, the gentleman from California (Mr. GEORGE MILLER) and

the gentleman from South Carolina (Mr. WILSON) each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. GEORGE MILLER of California. Mr. Chairman and members of the committee, this is an amendment technical in nature, and it clarifies that if no one is using diacetyl, it is not necessary for OSHA to issue a standard. The second portion clarifies that the purpose of the required NIOSH study is to study the health effects of substitutes of diacetyl. I urge passage of the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. WILSON of South Carolina. Mr. Chairman, I yield such time as he may consume to the gentleman from Georgia (Mr. KINGSTON), my next-door neighbor of historic Savannah.

Mr. KINGSTON. Mr. Chairman, I thank the gentleman for yielding me this time.

I am opposed to the amendment because I am opposed to the bill.

One of the great things about Congress, I say to people, is it is the ultimate place for those of us with attention deficit disorder, because we have the privilege on a day-to-day basis to go from health care, to war, to weapons systems. Which airplane is better, the C–5 or the C–17? To go to farm issues. How about the cotton program? Is it good? Well, should we model it after the peanut program?

Then education: college, primary, private school. Should there be prayer? Should we lower the student-teacher ratio? Indeed, the President of the United States, President Clinton, stood in this Chamber once and called for school uniforms. We were experts on that for the day.

Tax policy: Who should get tax breaks and who should not? Trade policies: Which countries are going to be the best to trade with us? Immigration.

The list goes on and on and on. But, unfortunately, our expertise does not continue with the demand and the issues.

And here we are talking about popcorn. I would say to my friend from California that 99.9 percent of the Members here have never been in a popcorn factory. I listened to my friend, Mr. MILLER. He knows a lot about this. I am impressed that he knows mixing rooms and building walls and so forth, but I would say most of us do not.

That is why we have agencies and commissions like OSHA set up, because they fill in the blanks where we cannot be experts. They have scientists who go in and make rulemaking policies in a balanced way, nonpolitical and nonemotional. It is scientific. They go in there and say, before we go out and set a bunch of standards on the private sector, let's make sure that we have the experts doing the decisionmaking.

And yet here we are, the nanny-state of Congress. Nurse Ratched once more knows best, completely oblivious to the fact that one of the largest manufacturers of microwave popcorn just recently said they would eliminate this product from their bands, and another manufacturer did the same thing. And even OSHA on September 24 said they will move forward with various measures to address the hazards of the workplace.

I think it is interesting that we have set up OSHA to help us, and yet we have decided now that we know popcorn and we know best.

But I would say to my friend from California, your expertise is not matched by 99 percent of us. I would say Ms. WOOLSEY, being a great Member who does her homework, and Mr. WILSON and the staffers who are here, you all are popcorn experts in Congress, and that's it. There are no other popcorn experts in Congress.

I think we do have some experts on trade and on taxes and on military things, but even they have to rely on agencies and organizations to give them better information. Yet we are leapfrogging over this information. I don't know if it is political or what, but we seem to be in a big rush to forget the standards that should be set by the proper agency.

Later, we will have the opportunity to vote on the Wilson alternative that would give OSHA time to set a standard that would be, after a NIOSH study, based on solid scientific evidence. It seems to me that is a more reasonable and balanced approach to solving this problem. And we are not even convinced. The data doesn't even say this problem is as big and as urgent as those who are advocating this bill are.

So I recommend a ''no'' vote on this amendment, even though I know it is technical in nature. But I think we should ultimately vote on the Wilson amendment in support of it, and then I think we should pass the bill. But if the Wilson amendment does not pass, we should vote this bill down. Because Congress is not an expert on this and we should know our limitations and we should let the proper agencies with the scientists and the experts make the rulemaking on something so micro-technical as micro-popcorn.

Mr. WILSON of South Carolina. Mr. Chairman, I yield back the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself the balance of my time.

I find it rather incredible that the gentleman from Georgia would come down and ridicule the idea that Congress would act in this matter when there has been such malfeasance by OSHA, by the Bush administration, and by the oversight of this Congress. I guess you can try to make light of it if you don't want to take responsibility for your actions.

What we are recommending today in this legislation is what NIOSH recommended for the protection of these workers in 2003, and it didn't happen, and nobody on the other side of the aisle asked the question: Why? So now we have workers who have worked in popcorn factories and maybe now in other manufacturing facilities that are losing their lung capacity, that are seeking lung transplants, that have died and have a disease that is called ''grotesque'' by the medical profession and who suggest, when you get this, it is the equivalent of the damage to your lungs if you inhaled acid.

There may be something trite in that, there may be something cavalier in that, but I don't see it. I don't see it. These families, these workers, are asking for our help. These workers are dying.

□ 1345

The industry has tried and is asking for our help. The labor unions are asking for our help. The scientists are asking for our help.

The gentleman would make light of this. He ought to talk to the families who have had members who have died or who have been severely impaired or are hoping that they can get a lung transplant before they die so they might have a chance to see their children and their grandchildren grow up and enjoy their family. It's not to be made light of.

There's a great deal of malfeasance here by this administration, by OSHA, by the Department of Labor and by failure to have oversight on this in this committee. They ought not to come to this floor and make light of this measure. This is about people's lives and about their health and about their well-being, and we should pass this amendment. We should reject the next amendment and we should pass this legislation.

Mr. Chairman, I yield back my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. GEORGE MILLER).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. WILSON OF SOUTH CAROLINA

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 110–349.

Mr. WILSON of South Carolina. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. WILSON of South Carolina:

Page 6, line 18, strike ''the date of enactment of this Act,'' and insert ''the National Institute for Occupational Safety and Health concludes there is sufficient data to support a recommended exposure limit and establishes such recommended exposure limit,''.

The CHAIRMAN. Pursuant to House Resolution 678, the gentleman from South Carolina (Mr. WILSON) and the gentleman from California (Mr. GEORGE MILLER) each will control 5 minutes.

The Chair recognizes the gentleman from South Carolina.

Mr. WILSON of South Carolina. Mr. Chairman, my amendment is very straightforward. This would ensure that the Occupational Safety and Health Administration, OSHA, sets a permissible exposure limit as directed by the underlying bill, which can be relied in science.

I offered this amendment in the Education and Labor Committee, and we agreed to work together to see if we could reach an agreement. Between committee action and today, we were unable to reach an agreement on the timeframe addressed by my amendment. So I'm offering it for floor consideration.

I understand my colleagues' goal is to set a standard for a substance that appears to be harming manufacturing workers in and around microwave popcorn manufacturing facilities. I know the well-meaning intention of their efforts. Unfortunately, I do not share their belief that this legislation will accomplish that goal.

First, there is widespread concern that while diacetyl is unquestionably a marker, it is not the sole cause of lung impairment in these workers. In addition to this, however, this bill would regulate diacetyl and require a standard to be set based on little or no available science. In other words, if a food manufacturing facility substitutes diacetyl with another flavoring chemical, there is no guarantee that that chemical is not the one making manufacturing workers sick.

Technically, the bill before us requires OSHA to set an interim final rule for diacetyl manufacturers and microwave popcorn plants to implement engineering controls for diacetyl exposure. It then directs OSHA to set a standard that will apply to all food manufacturing facilities. The expansion of coverage from the interim rule to the final rule and the time frame of 2 years in which OSHA is given to set the standard will impact OSHA's ability to follow the appropriate legal guidelines that would apply to a normal rulemaking.

All my amendment does is ensure that OSHA promulgates a regulation with appropriate stakeholder input and the science to establish a technically feasible permissible exposure limit. Also, I would note that OSHA announced Monday that it would undertake a rulemaking on this substance.

I should note that there is a great deal of ongoing research and data gathering concerning the health effects of diacetyl. For example, the National Institute for Occupational Safety and Health is working to improve measuring diacetyl, while the National Jewish Medical Center is working to gather data from workers about lung function. California OSHA also is working with the industry to gather the much-needed information to set a standard. Without any conclusive evidence, which has yet to be generated by any source at this point in time, we are putting the cart before the horse, and because of this, I respectfully urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Chairman, this amendment ensures that OSHA can continue to slow-walk a final rulemaking on diacetyl exposure for all workers. Hundreds of workers are exposed to diacetyl, and they've fallen ill with this debilitating lung disease that, as the chairman told you, was equivalent to inhaling acid. Can you imagine what their lungs look like and why at the age of 30 a young father has to have a double lung transplant, and maybe that won't even save his life?

The amendment removes the requirement that OSHA complete final rulemaking within 2 years of enactment of this legislation.

Under this amendment, the final rule would not be required to be completed until 2 years after NIOSH makes a finding that there's sufficient data to support a recommended exposure limit. NIOSH has already told us that they know this is something that they support and diacetyl should be and must be controlled. If NIOSH is delayed, more workers, including the workers we're talking about today, will be unprotected.

While workers in popcorn and flavoring facilities would be protected under the emergency standard, workers in other parts of the food industry where diacetyl is being used would be left unprotected for an indeterminate number of years. Not days, not months, but years. One food manufacturer, for example, recently announced a new line of artificial butter containing diacetyl despite its hazards to workers. Those workers would lose protections because of the Wilson amendment.

This interim rule, Mr. Chairman, covers a narrow band of workers, popcorn workers and flavoring facilities. By slow-walking this final rulemaking, as Mr. WILSON's amendment would allow, other workers exposed to diacetyl will continue to get sick. They will continue to die.

Vote ''no'' on any further delay to workplace safety rules.

Mr. WILSON of South Carolina. Mr. Chairman, may I inquire as to the time remaining?

The CHAIRMAN. The gentleman from South Carolina (Mr. WILSON) has 2 minutes remaining. The gentleman from California (Mr. GEORGE MILLER) has 2½ minutes remaining.

Mr. WILSON of South Carolina. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. MCKEON), the distinguished ranking committee member.

Mr. MCKEON. Mr. Chairman, I thank the gentleman for yielding and for his work on this amendment.

We're kind of facing a dilemma. I think both of us, both sides, want to protect workers. However, we want to make sure that they're protected by sound science.

This amendment immediately starts the 90-day rule which would protect people from diacetyl, those working on popcorn or other products, and then it requires that within the 2 years they have the final rule based on sound science. I think that this amendment would solve the dilemma to make sure that if diacetyl isn't the only cause, we have the time to find the science to make sure that the workers really are protected. We may find that diacetyl and diacetyl alone is the cause, but if not and we have moved forward just on diacetyl, these workers will think they're protected, and in the long run they will not be. And this is why we're really concerned. We move quickly to provide the 90-day rule, but then allow the time within the 2 years to base the final ruling on sound science.

For that reason, I ask that we support the gentleman's amendment that would fix this bill.

Mr. GEORGE MILLER of California. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from California has 2½ minutes remaining.

Mr. GEORGE MILLER of California. And the gentleman has the right to close on his amendment; is that correct?

The CHAIRMAN. The gentleman from South Carolina has 30 seconds remaining. The gentleman from California has the right to close.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself 2 minutes.

This amendment was offered in committee, and we rejected the amendment, and we offered to work with the gentleman. We've had a series of discussions, and he's been involved and staff have been involved in the discussions, but at the end of the day the simple fact was that they would not agree to any deadlines for NIOSH or OSHA to act in this amendment.

We think the timetables that are in the legislation are very important. If we take off these timetables, all of the past evidence suggests that OSHA and NIOSH will sort of turn to norm and, once again, we will have an open-ended process here where there isn't an urgency about the impacts of diacetyl.

We know what diacetyl does. That's become very clear. We don't know about everything else in the workplace. We don't know about everything else in the workplace, but we know what this very bad chemical can do to people and what it's causing for them to do it.

And so we lay out NIOSH to do it. They've already recommended the manufacturers are laid out. Then OSHA will do the final rulemaking. If they come back and say they can't do it, that's their scientific evidence.

We're not putting a legislative prescription on them, but what we are insisting is they address it and they address it now and they address it on the evidence that is here and emerging and that they make a decision and they protect these workers.

That's what this legislation is about, and that's what this amendment would negate.

Mr. Chairman, I reserve the balance of my time.

Mr. WILSON of South Carolina. Mr. Chairman, again, I urge adoption of the amendment. I want to commend my colleagues again for their good intentions.

I would like to restate that as a former member of the State board of the American Lung Association for a number of years, I've had a long-time concern about lung illnesses. I sincerely believe that the amendment that I have, which provides that action would be taken upon scientific evidence, is in the interest of the manufacturing workers in the United States.

Mr. Chairman, I yield back the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I urge Members of the House to vote against the Wilson amendment and then to support the legislation. If we adopt the Wilson amendment, we're going right back to the status quo, and the status quo is killing these workers in these facilities. And we have the ability to stop it with this legislation.

We should stop it now. We should not any longer empower OSHA to continue to drag their feet and ignore the health and the safety of these workers and their families.

I urge a ''no'' vote on the Wilson amendment and an ''aye'' vote on the legislation.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Carolina (Mr. WILSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WILSON of South Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 189, noes 233, not voting 15, as follows:

[Roll No. 912]

AYES—189

Aderholt	Blunt	Burton (IN)
Akin	Boehner	Buyer
Alexander	Bonner	Calvert
Altmire	Bono	Camp (MI)
Bachmann	Boozman	Campbell (CA)
Baker	Boren	Cannon
Barrett (SC)	Boustany	Cantor
Bartlett (MD)	Boyd (FL)	Capito
Barton (TX)	Brady (TX)	Carney
Bean	Broun (GA)	Carter
Biggert	Brown (SC)	Castle
Bilbray	Brown-Waite, Ginny	Chabot
Bilirakis	Buchanan	Coble
Bishop (UT)	Burgess	Cole (OK)
Blackburn		Conaway
Costa	Inglis (SC)	Porter
Cramer	Issa	Price (GA)
Crenshaw	Johnson, Sam	Pryce (OH)
Cuellar	Jordan	Radanovich
Culberson	Keller	Ramstad
Davis (KY)	King (IA)	Regula
Davis, David	Kingston	Rehberg
Davis, Tom	Kline (MN)	Reichert
Deal (GA)	Knollenberg	Rogers (AL)
Dent	LaHood	Rogers (KY)
Diaz-Balart, L.	Lamborn	Rogers (MI)
Diaz-Balart, M.	Latham	Rohrabacher
Donnelly	Lewis (CA)	Ros-Lehtinen
Doolittle	Lewis (KY)	Roskam
Drake	Linder	Royce
Dreier	Lucas	Ryan (WI)
Duncan	Lungren, Daniel E.	Sali
Ehlers	Mack	Schmidt
Ellsworth	Mahoney (FL)	Sensenbrenner
Emerson	Manzullo	Sessions
Everett	Marchant	Shadegg
Fallin	McCarthy (CA)	Shimkus
Feeney	McCaul (TX)	Shuster
Flake	McCotter	Simpson
Forbes	McCrery	Smith (NE)
Fortenberry	McHenry	Smith (TX)
Fortuño	McKeon	Stearns
Fossella	McMorris Rodgers	Sullivan
Foxx	Mica	Tancredo
Franks (AZ)	Miller (FL)	Tanner
Gallegly	Miller (MI)	Terry
Garrett (NJ)	Miller, Gary	Thornberry
Gerlach	Moran (KS)	Tiahrt
Gingrey	Murphy, Tim	Tiberi
Gohmert	Myrick	Turner
Goode	Neugebauer	Upton
Goodlatte	Nunes	Walberg
Granger	Paul	Walden (OR)
Graves	Pearce	Walsh (NY)
Hall (TX)	Pence	Wamp
Hastert	Perlmutter	Weldon (FL)
Hastings (WA)	Peterson (PA)	Weller
Hayes	Petri	Westmoreland
Heller	Pickering	Wicker
Hensarling	Pitts	Wilson (NM)
Hobson	Platts	Wilson (SC)
Hoekstra	Poe	Wolf
Hulshof		Young (AK)
Hunter		Young (FL)

NOES—233

Abercrombie	DeLauro	Johnson (GA)
Allen	Dicks	Johnson (IL)
Andrews	Dingell	Jones (NC)
Arcuri	Doggett	Jones (OH)
Baca	Doyle	Kagen
Baird	Edwards	Kanjorski
Baldwin	Ellison	Kaptur
Barrow	Emanuel	Kennedy
Becerra	Engel	Kildee
Berkley	English (PA)	Kilpatrick
Berman	Eshoo	Kind
Berry	Etheridge	King (NY)
Bishop (GA)	Faleomavaega	Kirk
Bishop (NY)	Farr	Klein (FL)
Blumenauer	Fattah	Kuhl (NY)
Bordallo	Ferguson	Lampson
Boswell	Filner	Langevin
Boucher	Frank (MA)	Lantos
Boyda (KS)	Frelinghuysen	Larsen (WA)
Brady (PA)	Giffords	Larson (CT)
Braley (IA)	Gilchrest	LaTourette
Brown, Corrine	Gillibrand	Lee
Butterfield	Gonzalez	Levin
Capps	Green, Al	Lewis (GA)
Capuano	Green, Gene	Lipinski
Cardoza	Grijalva	LoBiondo
Carnahan	Gutierrez	Loebsack
Castor	Hall (NY)	Lofgren, Zoe
Chandler	Hare	Lowey
Christensen	Harman	Lynch
Clarke	Hastings (FL)	Maloney (NY)
Clay	Herseth Sandlin	Markey
Cleaver	Higgins	Marshall
Clyburn	Hill	Matheson
Cohen	Hinchey	Matsui
Conyers	Hirono	McCarthy (NY)
Cooper	Hodes	McCollum (MN)
Costello	Holden	McDermott
Courtney	Holt	McGovern
Crowley	Honda	McHugh
Cummings	Hooley	McIntyre
Davis (AL)	Hoyer	McNerney
Davis (CA)	Inslee	McNulty
Davis (IL)	Israel	Meek (FL)
Davis, Lincoln	Jackson (IL)	Meeks (NY)
DeFazio	Jackson-Lee (TX)	Melancon
DeGette	Jefferson	Michaud
Delahunt		Miller (NC)
Miller, George	Ross	Spratt
Mitchell	Rothman	Stark
Mollohan	Roybal-Allard	Stupak
Moore (KS)	Ruppersberger	Sutton
Moore (WI)	Rush	Tauscher
Moran (VA)	Ryan (OH)	Taylor
Murphy (CT)	Salazar	Thompson (CA)
Murphy, Patrick	Sánchez, Linda T.	Thompson (MS)
Murtha	Sanchez, Loretta	Tierney
Nadler	Sarbanes	Towns
Napolitano	Saxton	Udall (CO)
Neal (MA)	Schakowsky	Udall (NM)
Norton	Schiff	Van Hollen
Oberstar	Schwartz	Velázquez
Obey	Scott (GA)	Visclosky
Olver	Scott (VA)	Walz (MN)
Ortiz	Serrano	Wasserman Schultz
Pallone	Sestak	Watson
Pascrell	Shays	Watt
Pastor	Shea-Porter	Waxman
Payne	Sherman	Weiner
Peterson (MN)	Shuler	Welch (VT)
Pomeroy	Sires	Wexler
Price (NC)	Skelton	Whitfield
Rahall	Slaughter	Wilson (OH)
Rangel	Smith (NJ)	Woolsey
Renzi	Smith (WA)	Wu
Reyes	Snyder	Wynn
Reynolds	Solis	Yarmuth
Richardson	Space	
Rodriguez		

NOT VOTING—15

Ackerman	Gordon	Kucinich
Bachus	Herger	Musgrave
Carson	Hinojosa	Putnam
Cubin	Jindal	Souder
Davis, Jo Ann	Johnson, E. B.	Waters

□ 1427

Mr. SAXTON, Mrs. MALONEY of New York, Mr. SHULER, Ms. WASSERMAN SCHULTZ, and Mr. SCOTT of Georgia changed their vote from ''aye'' to ''no.''

Mrs. BLACKBURN and Messrs. HOEKSTRA, BUCHANAN, ALTMIRE, DONNELLY, and ELLSWORTH changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. There being no further amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. ROSS) having assumed the chair, Mr. CARDOZA, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 2693), to direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl, pursuant to House Resolution 678, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 260, nays 154, answered ''present'' 2, not voting 16, as follows:

[Roll No. 913]

YEAS—260

Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Blunt
Boswell
Boucher
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Burgess
Butterfield
Buyer
Capps
Capuano
Carnahan
Carney
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Farr
Fattah
Ferguson
Filner
Fortenberry
Fossella
Frank (MA)
Frelinghuysen
Gerlach
Giffords
Gilchrest
Gillibrand
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchey
Hirono
Hobson
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Inglis (SC)
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Jones (NC)
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Klein (FL)
Kuhl (NY)
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Maloney (NY)
Markey
Marshall
Matsui
McCarthy (NY)
McCollum (MN)
McCotter
McDermott
McGovern
McHugh
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Michaud
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Poe
Pomeroy
Porter
Price (NC)
Rahall
Rangel
Regula
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schwartz
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Simpson
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh (NY)
Walz (MN)
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Welch (VT)
Weller
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth
Young (FL)

NAYS—154

Abercrombie
Aderholt
Akin
Alexander
Bachmann
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Biggert
Bilbray
Bishop (UT)
Blackburn
Boehner
Bonner
Bono
Boozman
Boren
Boustany
Boyd (FL)
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burton (IN)
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cuellar
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Everett
Fallin
Feeney
Flake
Forbes
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Hoekstra
Hunter
Issa
Johnson, Sam
Jordan
Keller
King (IA)
Kingston
Kline (MN)
Knollenberg
Lamborn
Latham
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Mahoney (FL)
Manzullo
Marchant
Matheson
McCarthy (CA)
McCaul (TX)
McCrery
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Musgrave
Myrick
Neugebauer
Nunes
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Price (GA)
Pryce (OH)
Radanovich
Ramstad
Rehberg
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shuster
Smith (NE)
Smith (TX)
Stearns
Sullivan
Tancredo
Tanner
Thornberry
Tiahrt
Walberg
Wamp
Weldon (FL)
Westmoreland
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)

ANSWERED ''PRESENT''—2

Cardoza
Melancon

NOT VOTING—16

Ackerman
Bachus
Carson
Cubin
Davis, Jo Ann
Gordon
Herger
Hinojosa
Jindal
Johnson, E. B.
Kucinich
Putnam
Scott (GA)
Souder
Waters
Whitfield

□ 1449

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair may postpone further proceedings today on a motion to suspend the rules on which a recorded vote or the yeas or nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

TMA, ABSTINENCE EDUCATION, AND QI PROGRAMS EXTENSION ACT OF 2007

Mr. GENE GREEN of Texas. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3668) to provide for the extension of transitional medical assistance (TMA), the abstinence education program, and the qualifying individuals (QI) program, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3668

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 ''TMA, Abstinence Education, and QI Programs Extension Act of 2007''.

SEC. 2. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) AND ABSTINENCE EDUCATION PROGRAM THROUGH DECEMBER 31, 2007.

Section 401 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432), as amended by section 1 of Public Law 110–48, is amended—

(1) by striking ''September 30'' and inserting ''December 31'';

(2) by striking ''for fiscal year 2006'' and inserting ''for fiscal year 2007'';

(3) by striking ''the fourth quarter of fiscal year 2007'' and inserting ''the first quarter of fiscal year 2008''; and

(4) by striking ''the fourth quarter of fiscal year 2006'' and inserting ''the first quarter of fiscal year 2007''.

SEC. 3. EXTENSION OF QUALIFYING INDIVIDUAL (QI) PROGRAM THROUGH DECEMBER 2007.

(a) THROUGH DECEMBER 2007.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking ''September 2007'' and inserting ''December 2007''.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(H) for the period that begins on October 1, 2007, and ends on December 31, 2007, the total allocation amount is $100,000,000.''; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking ''or (F)'' and inserting ''(F), or (H)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective as of September 30, 2007.

SEC. 4. EXTENSION OF SSI WEB-BASED ASSET DEMONSTRATION PROJECT TO THE MEDICAID PROGRAM.

(a) IN GENERAL.—Beginning on October 1, 2007, and ending on September 30, 2012, the Secretary of Health and Human Services shall provide for the application to asset eligibility determinations under the Medicaid program under title XIX of the Social Security Act of the automated, secure, web-based asset verification request and response process being applied for determining eligibility