

OSHA Fairness Coalition

Advocating for Balance

April 8, 2008

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

We write to express our strong opposition to the Combustible Dust Explosion and Fire Prevention Act of 2008, H.R. 5522. While we were saddened to see the accounts of the explosion at the Imperial Sugar plant near Savannah, Georgia we do not believe this bill, as its currently drafted, is an appropriate response to that tragedy or the hazards of combustible dust and urge the Committee to reject it.

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

The bill would also require that within 18 months OSHA promulgate a final standard that would carry forward all of the requirements of the IFR.¹ The provisions of the final standard would therefore have been set by this Committee rather than the safety and regulatory professionals at OSHA. We object to the complete discarding of the normal rulemaking process and protections that this bill would impose.² These provisions allow OSHA rulemaking to produce the most feasible, narrowly tailored regulation, which in turn maximizes the chances for implementation and compliance. Abandoning these procedures is a prescription for an ineffective regulation which will yield nothing more than penalties and litigation, not safer workplaces.

Adopting the voluntary consensus standards issued by NFPA as a mandatory OSHA regulation, without any intervening action, may sound like a good way to expedite rulemaking on this issue, but doing so without significant examination and changes would be entirely inappropriate. The process for producing these consensus standards is not at all like the process which OSHA undertakes to produce a regulation. There is no opportunity for the general public to examine and comment on these consensus standards. Nor are these standards subject to any of the critical reviews regarding quality of data, feasibility, and impact that OSHA regulations must undergo. Because these standards are written as guidance documents, they provide multiple and often overlapping recommendations. Companies use the guidance to arrive at the appropriate solutions for the unique characteristics of their operations which may or may not include all of the provisions of the standards. This would not be the case if these were converted directly to mandatory OSHA standards as H.R. 5522 would do. Also, because these standards are produced under a consensus process, there are significant issues that are left vague and ambiguous so that different groups and interests will endorse these standards. These intentionally open ended terms

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

² We have raised the same objections regarding previous workplace safety bills this Committee has moved which contained similar provisions.

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

For More Information Please Contact

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make such a voluntary consensus standard wholly inappropriate for becoming a mandatory OSHA regulation. In addition, none of the NFPA standards are available to the public without charge. While the NFPA has put them on their website, that only provides reading access. To print them, and therefore have them available for use, requires paying NFPA a fee. We object to giving NFPA such a windfall revenue stream.

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

H.R. 5522 would produce a flawed regulation by discarding the normal OSHA rulemaking procedures and adopting voluntary consensus standards that are not appropriate for conversion to mandatory OSHA regulations. More and better information rather than more regulations will always be a better strategy for preventing these, as well as all other, workplace tragedies. We urge the Committee to reject the Combustible Dust Explosion and Fire Prevention Act of 2008, H.R. 5522 as it is currently drafted.

Sincerely,

American Bakers Association	National Federation of Independent Business
American Composites Manufacturers Association	National Industrial Sand Association
American Foundry Society	National Mining Association
Associated Builders and Contractors	National Oilseed Processors Association
Associated General Contractors	National Roofing Contractors Association
Corn Refiners Association	Printing Industries of America
Industrial Minerals Association - North America	Retail Industry Leaders Association
Mason Contractors Association	Textile Rental Services Association of America
National Automobile Dealers Association	The Institute for Liberty
National Association of Home Builders	The Society of the Plastics Industry, Inc.
National Association of Manufacturers	U.S. Chamber of Commerce
Building Owners and Managers Association International	
Plumbing Heating Cooling Contractors - National Association	

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