

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2693
OFFERED BY Ms. WOOLSEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Popcorn Workers Lung
3 Disease Prevention Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

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

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

15 (3) From 2000–2002 NIOSH identified cases
16 of bronchiolitis obliterans in workers employed in
17 microwave popcorn plants, and linked these illnesses
18 to exposure to diacetyl used in butter flavoring. In

1 December 2003, NIOSH issued an alert “Preventing
2 Lung Disease in Workers Who Use or Make
3 Flavorings,” recommending that employers imple-
4 ment measures to minimize worker exposure to diac-
5 etyl.

6 (4) In August 2004 the Flavor and Extract
7 Manufacturers Association of the United States
8 issued a report, “Respiratory Health and Safety in
9 the Flavor Manufacturing Workplace,” warning
10 about potential serious respiratory illness in workers
11 exposed to flavorings and recommending comprehen-
12 sive control measures for diacetyl and other “high
13 priority” substances used in flavoring manufac-
14 turing.

15 (5) From 2004–2007 additional cases of
16 bronchiolitis obliterans were identified among work-
17 ers in the flavoring manufacturing industry by the
18 California Department of Health Services and Divi-
19 sion of Occupational Safety and Health (Cal/
20 OSHA), which through enforcement actions and an
21 intervention program called for the flavoring manu-
22 facturing industry in California to reduce exposure
23 to diacetyl.

24 (6) In a report issued in April 2007, NIOSH
25 reported that flavor manufacturers and flavored-food

1 producers are widely distributed in the United
2 States and that bronchiolitis obliterans had been
3 identified among microwave popcorn and flavoring-
4 manufacturing workers in a number of States.

5 (7) Despite NIOSH's findings of the hazards of
6 diacetyl and recommendations that exposures be
7 controlled, and a formal petition by labor organiza-
8 tions and leading scientists for issuance of an emer-
9 gency temporary standard, the Occupational Safety
10 and Health Administration (OSHA) has not acted to
11 promulgate an occupational safety and health stand-
12 ard to protect workers from harmful exposure to di-
13 acetyl.

14 (8) An OSHA standard is urgently needed to
15 protect workers exposed to diacetyl from
16 bronchiolitis obliterans and other debilitating condi-
17 tions.

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

19 (a) INTERIM STANDARD.—

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

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

4 (B) to all microwave popcorn production
5 and packaging establishments that use diacetyl-
6 containing flavors in the manufacture of micro-
7 wave popcorn.

8 (2) REQUIREMENTS.—The interim final stand-
9 ard required under subsection (a) shall provide no
10 less protection than the recommendations contained
11 in the NIOSH Alert “Preventing Lung Disease in
12 Workers Who Use or Make Flavorings” (NIOSH
13 Publication 2004–110) and include the following:

14 (A) Requirements for engineering, work
15 practice controls, and respiratory protection to
16 minimize exposure to diacetyl. Such engineering
17 and work practice controls include closed proc-
18 esses, isolation, local exhaust ventilation, proper
19 pouring techniques, and safe cleaning proce-
20 dures.

21 (B) Requirements for a written exposure
22 control plan that will indicate specific measures
23 the employer will take to minimize employee ex-
24 posure; and requirements for evaluation of the
25 exposure control plan to determine the effective-

1 ness of control measures at least on a biannual
2 basis and whenever medical surveillance indi-
3 cates abnormal pulmonary function in employ-
4 ees exposed to diacetyl, or whenever necessary
5 to reflect new or modified processes.

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

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

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

14 (F) Requirements to provide written safety
15 and health information and training to employ-
16 ees, including hazard communication informa-
17 tion, labeling, and training.

18 (3) EFFECTIVE DATE OF INTERIM STAND-
19 ARD.—The interim final standard shall take effect
20 upon issuance. The interim final standard shall have
21 the legal effect of an occupational safety and health
22 standard, and shall apply until a final standard be-
23 comes effective under section 6 of the Occupational
24 Safety and Health Act (29 U.S.C. 655).

1 (b) FINAL STANDARD.—Not later than 2 years after
2 the date of enactment of this Act, the Secretary of Labor
3 shall, pursuant to section 6 of the Occupational Safety and
4 Health Act (29 U.S.C. 655), promulgate a final standard
5 regulating worker exposure to diacetyl. The final standard
6 shall contain, at a minimum, the worker protection provi-
7 sions in the interim final standard, a short term exposure
8 limit, and a permissible exposure limit that does not ex-
9 ceed the lowest feasible level, and shall apply at a min-
10 imum to all facilities where diacetyl is processed or used.