

# OSHA Fairness Coalition

*Advocating for Balance*

April 29, 2008

TO THE MEMBERS OF THE HOUSE OF REPRESENTATIVES:

We write to express our strong opposition to the Combustible Dust Explosion and Fire Prevention Act of 2008, H.R. 5522 which will be considered on the House floor this week. 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 it was approved by the Education and Labor Committee, is an appropriate response to that tragedy or the hazards of combustible dust and urge you to oppose this bill.

While H.R. 5522 was improved in committee, we are still troubled by its mandate that OSHA promulgate an interim final regulation (IFR) within 90 days without any of the normal rulemaking procedures associated with OSHA rulemaking. The IFR would therefore be issued without any opportunity for comments by those subject to it, nor would OSHA perform any analyses such as those for significant risk, economic and technological feasibility, and small business impact, among others. The bill would then require that within 18 months OSHA promulgate a final standard that would carry forward all of the requirements of the IFR<sup>1</sup> and add others mandating engineering, administrative, and work practice controls. The final standard would also have to incorporate provisions from various voluntary consensus standards issued by the National Fire Protection Association (NFPA). Further refinements from the Chairman that may be accepted on the floor do not alter the requirement for an IFR with none of the normal OSHA rulemaking protections.

We object to the short circuiting of the normal rulemaking process that this bill would impose. Normal OSHA rulemaking allows the agency 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 not produce safer workplaces. Indeed, even the Chemical Safety Board report referenced in this bill recommends that OSHA conduct a full rulemaking, and makes no mention of an IFR.

Additionally, instructing OSHA to incorporate provisions from voluntary consensus standards issued by the NFPA may sound like a good way to expedite rulemaking on this issue, but doing so is 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. The consensus process, which produces these standards, leaves significant terms and requirements intentionally vague and ambiguous so that different groups and interests will endorse these standards. But this also makes these standards unsuitable for becoming a mandatory OSHA

---

<sup>1</sup> OSHA's failure to initiate a traditional rulemaking to adopt a final rule on lead in construction, after issuing an interim final rule in this area at Congress' direction, leads employers to be extremely wary of any legislation giving OSHA IFR authority.

# OSHA Fairness Coalition

*Advocating for Balance*

regulation. Furthermore, none of the NFPA standards are fully available to the public without charge. While the NFPA has put them on their website for 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.

The hazard of combustible dust is an issue which is already covered by numerous OSHA regulations, in addition to a wide array of private sector information. 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 and targeting companies that may have combustible dust hazards in a way that will combine greater information with greater inspection and enforcement activity. The investigation of the tragedy at the Imperial Sugar plant has yet to determine that a lack of regulatory guidance contributed to the explosion and there is no evidence that a new OSHA standard would have prevented that tragedy, particularly if that regulation is produced in the manner specified in H.R. 5522. 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 normal OSHA rulemaking procedures and because of this, we urge you to oppose the Combustible Dust Explosion and Fire Prevention Act of 2008, H.R. 5522.

Sincerely,

American Bakers Association  
American Composites Manufacturers Association  
American Forest & Paper Association  
American Foundry Society  
Associated Builders and Contractors  
Associated General Contractors  
Building Owners and Managers Association  
International  
Independent Electrical Contractors, Inc.  
Mason Contractors Association  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Automobile Dealers Association

National Federation of Independent Business  
National Marine Manufacturers Association  
National Roofing Contractors Association  
Plumbing Heating Cooling Contractors -  
National Association  
Printing Industries of America  
Retail Industry Leaders Association  
Textile Rental Services Association of America  
The Industrial Minerals Association - North  
America  
The National Industrial Sand Association  
The National Oilseed Processors Association  
The Society of the Plastics Industry, Inc.  
U.S. Chamber of Commerce

*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*

*Marc Freedman (202)463-5535*