



International Dairy Foods Association

Milk Industry Foundation

National Cheese Institute

International Ice Cream Association

November 12, 2009

Ms. Marley Hart
Executive Officer
CA Occupational Safety and Health Standards Board
2520 Venture Oaks Way
Suite 350
Sacramento, CA 95833

Re: Proposed Rule, Occupational Exposures to Food Flavorings Containing Diacetyl (GENERAL INDUSTRY SAFETY ORDERS, Division 1, Chapter 4, Subchapter 7, Article 109, Section 5197)

Dear Ms. Hart:

The International Dairy Foods Association (IDFA) represents the dairy manufacturing and marketing industries and their suppliers, with a membership of 550 companies representing a \$110-billion a year industry. IDFA is comprised of three constituent organizations, the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). IDFA's 220 dairy processing members run more than 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85% of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States. IDFA can be found online at www.idfa.org.

Fundamentally, there is no record of any unusual incidence of respiratory illnesses related to diacetyl in our industry's workforce. Where flavors containing diacetyl are used within our industry, they traditionally contain less than 1% diacetyl. In dramatic contrast, the problems for which this regulation is being promulgated appeared quickly in relatively young industries using novel and repetitive processes. These are situations and conditions that will not be found anywhere in a dairy processing plant.

IDFA shares the California Occupational Safety and Health Standards Board's concern about worker safety, particularly about the potential for worker harm as a result of frequent exposure to high levels of atmospheric diacetyl in the workplace. We too believe that no worker should have to sacrifice his or her pulmonary health while pursuing an occupation, and that employers need to seek out and eradicate any identified problems from their workplaces. While we applaud CalOSHA's endeavor to prevent additional instances of work-related bronchiolitis obliterans, we are concerned that the proposed rule will unnecessarily cover many operations where diacetyl use is minimal and is not a


problem. When determining the scope of coverage, CalOSHA should consider the behavior of diacetyl in situations where: 1) its use is infrequent; 2) it is used or added to cold, wet foods; 3) it is used in low concentrations; 4) it is used in partially or fully enclosed systems; and 5) it is used in areas with good ventilation. These are the conditions of diacetyl use prevalent in dairy processing. And under these conditions, use of diacetyl-containing flavors and food products in the dairy industry will not cause respiratory problems in our workforce.

To illustrate one of our concerns with the proposed rule, our understanding is that the acquisition and use of a single container of a flavoring containing diacetyl at 1% or more will bring an entire facility into the scope of the rule. Once a facility is within the scope of the proposed rule, warning labels will be required on all containers of diacetyl-containing food in the facility. By extrapolation, a facility that used a flavor containing diacetyl in excess of 1% exclusively in food A (which perhaps is made once per month) would need to place warning labels on food X, Y and Z (which are made every day) if those foods contained any amount of diacetyl, including naturally occurring diacetyl, such as the naturally occurring diacetyl found in strawberries. To complicate matters further, it would appear that the referenced container could in fact be a final consumer package, so the conveyance of information would then extend to consumer labels.

We do not believe that CalOSHA intended to regulate in such a manner, but we believe the illustration in the above paragraph is likely to occur with considerable frequency in the food industry. We further believe such a warning in these situations would confuse workers (and the public) and diminish the effectiveness of the protective effort.

To accomplish the goal of protecting California's workers from hazards associated with diacetyl, we urge CalOSHA to reconsider its approach to regulating diacetyl and to consider the approach offered by the Grocery Manufacturers Association (GMA) in its comments. We believe the permissible exposure limit (PEL) approach that GMA discusses will enhance and optimize worker safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Detlefsen", with a long horizontal line extending to the right.

Clay Detlefsen
Vice President & Counsel