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HAPPENINGS FROM THE HILL

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AIHCE EDITION

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A special expanded edition for AIHce attendees

FEDERAL LEGISLATIVE ACTIVITY

Congress has once again become somewhat interested in the issue of occupational health and safety. While this doesn't mean (far from it) that anything substantive will come of the sudden activity, it does mean that notwithstanding the other important issues taking up most of the debate, there still are those who believe we cannot allow occupational health and safety to fall by the wayside.

Here is the latest and those behind it:

Representative Charlie Norwood (R-GA)

As mentioned in an earlier "Happenings", Rep. Charlie Norwood has reintroduced his series of four bills to reform OSHA.

- HR 739 – Providing flexibility with regard to filing a notice of contest by an employer
- HR 740 – Increase membership on the Occupational Safety and Health Review Commission
- HR 741 – Judicial deference to Conclusions of Law
- HR 741 – Award of attorney's fees and costs

All four of these measures have been marked up by the full House Committee and simply await final action in the House. All four are expected to pass, as they did in the last session of Congress, and make their way to the Senate where they face an uncertain future.

Senator Michael Enzi (R-WY) (new Chairman of the Senate Health, Education, Labor and Pensions Committee) has not indicated whether or not he will support these measures in his Senate Committee. He did not take up the bills in the last session of Congress, but because there is a new subcommittee chairman this time around, the bills are expected to receive due consideration. As proof of this, Senator Johnny Isakson (R-GA), the new subcommittee chairman, held a hearing on May 10 to discuss these measures and other OSHA issues.

AIHA submitted comments to Rep. Norwood on these four measures. AIHA supports two of the bills (HR 739 and HR 740) and withheld support or opposition to the other two bills citing the fact these were more in line with legal issues than occupational health and safety and lacked the “good science” AIHA looks for in legislative measures.

Senator Michael Enzi (R-WY)

Senator Michael Enzi has stated he intends to reintroduce his Safety Advancement for Employees (SAFE) Act later this year. This bill was a very broad measure providing for several changes to the OSH Act. Most notably of interest to AIHA is the section creating a third party workplace review program. AIHA has long supported this concept and has in the past worked with Senator Enzi on its development.

However, the SAFE Act contains many more provisions that have proven to be controversial. Noteworthy among these is a section that would increase criminal penalties for employers who violate the OSH Act in such a way that it results in a fatality. While many stakeholders agree that criminal penalties need to be raised, as they say “the devil is in the details”. Also included is a section on alcohol and drug abuse testing as well as a section addressing the development of model MSDSs.

Speaking of the third party workplace review program, AIHA has been working with several others to develop a stand-alone bill that would create a third party workplace review pilot program. The program would be limited to small businesses and would be put in place in three states. AIHA feels a pilot program is the way to go at this point in time, providing some guidance on whether or not a full-blown program would be acceptable and successful.

Representative Todd Tiahrt (R-KS)

Representative Todd Tiahrt has reintroduced a series of bills that address various enforcement issues within OSHA. The bills are HR 977, HR 978, HR 979, HR 980, HR 981, and HR 1028. The bills address issues such as limiting penalties for less than willful violations, limitations on the citing of employers on multi-employer worksites, requiring written statements to employers following an OSHA inspection, a requirements that citations be issued within 30 days of an inspection, allowing for 30 days to contest OSHA citations, and limiting the use of previous citations in subsequent citations.

No hearings have been scheduled on any of these measures.

Democratic Legislation

Not to be outdone, the other side of the aisle has also introduced legislation to amend the OSH Act. Senator Edward Kennedy (D-MA) and Representative Major Owens (R-NY) have introduced legislation, S 944 and HR 2004, that would make several changes. Some of the provisions – increasing criminal penalties for willful violations, requiring employers to pay for personal protective equipment, whistleblower protections, and the public’s right to know about dangerous chemicals in their neighborhood.

Senator Jon Corzine (D-NJ) and Representative Owens have also introduced the criminal penalty provision as stand-alone bills, S 947 and HR 2005.

Representative John Conyers (D-MI) – MOLD

Representative John Conyers has reintroduced his legislation known as the “Melina” bill, HR 1269. This bill would provide several ways to address the continuing interest in exposure to the hazards of mold. In addition to requiring EPA and others to address the issue of competency for individuals involved with mold inspection and abatement, the bill would provide a broad list of services to mold victims. A federal insurance program would be created that would reimburse victims. The bill would also require additional research into the issue and create education programs for the public.

The bill received little support in the last session of Congress and it is doubtful it will receive much support this time around. AIHA is one of the only organizations that submitted extensive comments to Rep. Conyers.

The issue remains of interest at OSHA though. The agency hopes to soon issue health and safety guidelines on exposure to mold. Many hoped the agency would have moved a little faster on this guideline since they announced their intention more than a year ago.

CDC/NIOSH Controversy

Stakeholders and Members of Congress continue to follow the CDC/NIOSH reorganization controversy. NIOSH was saved from the reorganization knife last year when language was added to the appropriations bill that required CDC to maintain the “status-quo” at NIOSH. This was only for a one-year period and many feel CDC will attempt to continue the effort to blend NIOSH in to the whole of CDC. AIHA and other stakeholders have sent letters and conducted numerous meetings with Congressional staff to assure NIOSH continued autonomy in its research work on behalf of occupational safety and health.

There is hope that the meetings and letters will convince Congress to once again keep NIOSH in its sights during the appropriations process. However, this seems to be a short-term solution to a bigger problem – the future of NIOSH. AIHA is on record as suggesting that Congress should request the Government Accountability Office to conduct a study of the organizational structure of NIOSH. Such a study could determine if NIOSH is best left at CDC. If not, the study should look at other options.

Regulatory Activity

The Occupational Safety and Health Administration (OSHA) announced its updated semi-annual regulatory agenda this week. The agenda is to be used as a “roadmap” for the agency to announce those activities that will be undertaken and continue to be at the forefront of the agencies efforts. Over the course of the last several years the agenda has been considerably reduced as the agency announced it would only list issues on which the agency actually was planning some effort. In the past, there were dozens of issues that lingered on the agenda for years with no activity.

Here is a look at issues on the regulatory agenda that may be of interest to AIHA members, as well as an update on the current status of these issues:

PRERULE STAGE

Occupational Exposure to Beryllium

OSHA began looking at this issue in 2002 and has determined that the existing PEL may not be sufficient. Following a request for information, the agency has determined that rulemaking is necessary and is evaluating several options. The agency hopes to complete a small business regulatory review sometime this fall. There is some talk that OSHA may include language to continue monitoring OSHA inspectors for beryllium exposure.

Ionizing Radiation

The agency is in the process of determining the appropriate course of action regarding this standard. Earlier this month the agency published a “request for information” and the comment period remains open at this time. The agency feels that the regulations published in 1974 should be updated to reflect new technological and safety advances.

Emergency Response and Preparedness

OSHA has determined that emergency responder health and safety is currently regulated under numerous individual standards causing confusion. Many of these standards were promulgated years ago and do not address the needs of today. The agency is planning on collecting information to evaluate what action the agency should take. OSHA hopes to put out this request for information sometime this summer.

Standards Improvement

OSHA is continuing efforts to remove or revise unnecessary and inconsistent safety and health standards. The agency has completed Phases I and II and is now looking at Phase III. The agency hopes to announce an advanced notice of Phase III sometime this fall.

Hazard Communication

An important undertaking for sure. Because of the continued interest in material safety data sheets (MSDS) and the need for the U.S. to consider whether or not to adopt the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) by 2008, this issue may be one that moves along quickly. The agency is considering modifying its hazard communication standard to make it consistent with the GHS. The timetable for an advanced notice or proposed rulemaking is set for August of this year.

The agency also plans on issuing proposed guidelines on MSDS this year, followed by a final guidance in 2006, in response to complaints from some chemical manufacturers that the data now included in the MSDSs is not consistent and increases the chance for problems. OSHA hopes to provide a sample data sheet format, information on training workers, and increase focus on the accuracy of the MSDSs.

There is considerable interest with this issue in Congress and among private organizations. In the last session of Congress Senator Michael Enzi included language within the SAFE Act that addressed the issue of MSDS.

PROPOSED RULE STAGE

Crystalline Silica

The agency recognizes that the current PEL for crystalline silica is more than 30 years old and should be updated. The agency has looked at various options to address this problem, but now believes that rulemaking is needed. The agency hopes to promulgate a notice of proposed rulemaking by April of 2006.

FINAL RULE STAGE

Assigned Protection Factors

In 1998, OSHA published the final Respiratory Protection Standard, except for some provisions on assigned protection factors (APFs). OSHA recognized that there were different APFs being used by employers, some from the 1980s and some using more recent guidelines. OSHA has considered allowing the current situation to continue, but recognizes the confusion it is causing. A final rule is scheduled for September of 2005, but because of the ongoing debate on this issue, look for this deadline to be scrapped.

Hexavalent Chromium

OSHA is under court order to publish a final rule by January 2006 and the agency continues to work towards meeting this goal. OSHA recognized the need for rulemaking, but because of the amount of time to finalize this rule, the courts ordered it to be completed by 2006. Public hearings have been held and all comments are being reviewed at this time. The agency says it is on track to meet the deadline and publish the final rule. However, there continues to be considerable debate over the exposure limit OSHA plans on using. In simple terms, OSHA plans on lowering the level from 52 to 1 microgram per cubic meter. Industry is opposed saying it is too low and wants three years to come into compliance. Proponents of the new rule want the level to be even lower, set at .25.

Personal Protective Equipment

An ongoing issue since 1999, OSHA continues to consider how to address this issue. Numerous stakeholders have been pressing OSHA to finalize standards on who should pay for this equipment and many thought the agency was prepared to close the debate. However, the agency surprised everyone by reopening the comment period to consider the definition of "tool of the

trade”. This comment period ended last September and the agency says it hopes to finalize the standard by October.

It remains to be seen if this occurs under an Acting Secretary. Both industry and labor seem to have concerns about this proposal, not only the “tool of the trade” definition, but how to treat temporary workers.

National Consensus Standards

The agency continues to undertake a multi-year project to update OSHA standards by adopting national consensus standards. Sounds easy, but the agency has encountered opposition to some of these updates. The agenda shows the final rule to be promulgated by July; however, OSHA withdrew the direct final rule. Comments on the proposed rule will not be reopened.

LONG-TERM ACTIONS and COMPLETED ACTIONS

The most interesting comment on these categories isn’t what “is” on the agenda but what “isn’t” on the agenda. The only thing listed under long-term actions is hearing conservation programs for construction workers. On the completed agenda, the only main issue of interest to AIHA is the standards improvement project phase II that was mentioned earlier.

WHAT’S NOT ON THE AGENDA?

Here are some of the major issues that did not appear on the regulatory agenda:

Ergonomics

The agency has shown no interest in getting anywhere near the issue of ergonomics. While several industry-specific guidelines have been published, most insiders believe the agency has concluded its efforts on ergonomics. The national advisory committee on ergonomics was sunset at the end of 2004 and there is no indication the agency is interested in appointing another committee to look at this issue. There is also no interest in the issue of ergonomics from a legislative point of view.

Permissible Exposure Limits (PELs)

While the AIHA effort of facilitating a discussion between industry and labor on a proposal to update the PELs has provided limited results, the agency is also taking a very slow approach to this issue. Everyone agrees the PELs need to be updated, but finding the best way to do it has resulted in few solutions. When John Henshaw left the agency at the end of 2004, he indicated that being unable to update the PELs was one of the most frustrating items left undone.

Occupational Exposure to Tuberculosis (TB)

Following the withdrawal of the OSHA TB proposal, OSHA intended on enforcing the general industry respiratory standard for occupational exposure. Congress quickly put an end to this idea when they adopted language in the 2005 annual appropriations bill that prohibited OSHA from enforcing annual fit testing for one year. This didn’t stop everyone though, as several states with their own OSHA program opted out of the CDC guidelines to follow the original OSHA

approach and enforce the standards on their own (CA, WY, NY). Now, as Congress prepares to debate the FY 06 appropriations bill, there is concern that Congress will again place a one-year prohibition on OSHA. OSHA and AIHA remain opposed to another prohibition.

Who's on First?

Nearly six months after the resignation of John Henshaw as Assistant Secretary of Labor for OSHA we still have no idea who the next head of the agency will be. But insiders seem to think the administration is getting very close to make a decision and announcing a nominee.

For several months, there seemed to be only three names being discussed – Dr. John Howard, the head of NIOSH; industry lawyer Horace Thompson; and Jonathan Snare, the Acting Assistant Secretary.

Now word comes that three new names have emerged as the leading candidates for the position. The three: John Duncan, former California-OSHA official; Ed Foulke, former chairman of the Occupational Safety and Health Review Commission; and June Brother, a Georgia-Pacific executive. There also is word that Jonathan Snare, the Acting Assistant Secretary, seems to remain on the updated list. As for Dr. Howard, an interesting view from insiders is that while Dr. Howard is more than qualified for the position, the administration views him as too valuable at NIOSH. And speculation that Horace Thompson may be appointed to Review Commission.

State Legislative Activity

Professional Recognition/Title Protection

Success achieved in the State of Georgia as the Governor signed into law professional recognition/title protection for the professions of industrial hygiene, safety and health physics. With enactment of this law, Georgia becomes the 19th state to enact some form of professional recognition/title protection.

Mold

The issue continues to be of considerable interest in the states. So far this year, 13 states have introduced 24 separate bills addressing the issue of mold analysis, inspection, and/or remediation. Six of these bills died when the legislatures adjourned for the year, one additional bill has died in a committee, and two bills await the Governor's signature. However, the two bills that have passed are very minor bills having no impact on AIHA or our members.

Methamphetamine Laboratory Clean Up

One of the most active issues in 2005 – 30 bills have been introduced this year in 17 states.

Nearly 10 of these measures have either been signed by the Governor or are about to be sent to the Governor for approval. While these bills are not specific, they do put in place the fact that the State must develop regulations on meth lab clean up, which will have an impact on some AIHA members. AIHA national is following this issue closely. An additional note – there are currently seven different legislative measures introduced in Congress addressing this issue.

Additional Success!

In addition to the professional recognition/title bill that has been enacted in Georgia, AIHA was also involved in two additional state efforts that were successful.

In Utah, AIHA submitted a letter of support for a bill that would have provide additional funds to the education resource training center in Utah. The legislation was enacted into law.

In New York, AIHA and others opposed an effort by the Governor to eliminate the New York Hazard Abatement Board and the Occupational Safety and Health Training Program. In the final budget package approved and signed by the Governor both programs were retained.

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. The center can be found within the members-only section of the AIHA web page.

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each state site is access to the various state agencies, including the Governor's office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

For information on any of the items in this report, please contact Aaron Tripler.