



Happenings From The Hill

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Recess! What Recess?

The dog days of summer are here in Washington and Congress is supposed to be taking their annual month-long summer recess. But things don't always work out the way they are supposed to. The Senate is scheduled to begin their recess on Friday of this week and it looks as though that may happen. The House actually went out a week ago but it now looks as if they will be coming back to Washington next week. Seems they have determined there are still some important issues to address before they return to their vacation.

Either way, both the House and the Senate are scheduled to return full-time on September 10 for what will be a most interesting month of business. No targeted adjournment date has been set but many believe Congress will adjourn around October 15th so members can return home and campaign for the November election. There is also a good chance Congress will return for a "lame-duck" session following the election. Should be very interesting to see what they plan on accomplishing – with much dependent on the outcome of the November elections.

One thing for certain. Neither the House nor Senate wants to take any controversial votes between now and the end of session so as to protect their re-election chances. One thing they will have to address is the 2011 federal budget that is supposed to begin on October 1. They have several choices – they can

adopt each of the appropriation bills in separate votes; they can simply adopt a continuing resolution that provides for the same funding in 2011 as an agency received in 2010; or they can throw all of the appropriation bills into one omnibus bill. No matter which option is chosen, there will be a lot of debate.

Speaking of the Budget

Here's where things stand on the budgets of interest to occupational health and safety:

OSHA – OSHA received approximately \$558 million in fiscal year 2010. President Obama proposed a fiscal 2011 OSHA budget of \$574 million. As things now stand – the House Appropriations Subcommittee has approved \$580 million for 2011; however there is no breakdown of funding levels for specific programs until the full Committee takes up the bill. In the Senate, the full Senate Appropriations Committee has approved an OSHA budget for 2011 in the amount of a little more than \$574 million, nearly identical to what the President proposed. Outlook for OSHA – you can probably bet the Senate numbers will be closer to the actual dollars appropriated over what the House is considering.

NIOSH – President Obama proposed a 2011 NIOSH budget in the amount of \$269 million, up just a bit from 2010. This amount doesn't include Research Agenda dollars or the World Trade Center fund for first responders. No specific word yet on what the House or Senate might do with NIOSH funding but the final figure is likely to be very close to what has been proposed.

MSHA – The President proposed a small increase for MSHA to around \$360 million. However, the House subcommittee report approved \$368 million for MSHA. No word on what the Senate approved but MSHA is likely to receive somewhere between what the President proposed and what the House subcommittee approved.

MSHA / OSHA Reform Legislation

What a month it has been following the MSHA/OSHA reform legislative see-saw. To bring you up to speed in as few words as possible, here is what has taken place:

Following the Upper Big Branch mine fatalities it was obvious Congress would address mine safety and health issues. It was also clear that Congress would be hard-pressed to enact a measure to reform MSHA and a separate measure to reform OSHA (the Protecting America's Worker Act - PAWA). So, one bill was introduced that would reform both agencies. Most of this measure addressed changes to the MSH Act but several of the original sections of the PAWA were included. Noticeably absent from the OSHA portion was the section that would have expanded OSHA coverage to those public employees not now covered by

OSHA. This wasn't unexpected because of the cost associated with this expanded coverage.

Following hearings in the House, the full committee voted to approve the bill and send it to the full House for a vote. However, the bill they approved was somewhat different than the one they first considered. In other words, they added some things and deleted some things. There was some talk the House would vote on this measure prior to the summer recess but that didn't happen.

What's next? It is likely the House will return from recess and approve this MSHA/OSHA bill. But chances are pretty slim the bill will make it out of the Senate. Several reasons for this. One, there just may not be enough time left in the session to approve the bill. Two, there are some Senate Democrats who are already signaling their intention to negotiate removal of the OSHA reform measures within this bill. If that occurs they may move a stand-alone MSHA bill forward.

In the meantime, two Democratic Senators have now introduced a bill in the Senate that is nearly identical to the measure approved by the House Committee. Republicans will attempt to remove the OSHA portion if this bill moves forward but they are being very careful not to look as though they oppose reform to MSHA standards.

Again, time is running short. But even if these bills are not enacted in this session of Congress you can bet they will reappear in early January.

Attempt to Study NIOSH Contained in OSHA Reform Measure

Remember several years ago when Dr. Julie Gerberding was the head of CDC and made an attempt to assume more control of NIOSH; placing the agency in a more controlled environment and slashing the budget? If you recall, AIHA and several other stakeholders worked long and hard to protect the independence of NIOSH and maintain its funding base. Success was achieved and things have gone well since then.

Following this attempt to change the status of NIOSH, AIHA called on Congress to request a GAO study to look at the pros and cons of whether or not NIOSH should remain within the organizational structure of CDC. Our goal was to perhaps determine if NIOSH would be better off in a different locale – perhaps somewhere like the National Institutes of Health. Every year since this first threat to NIOSH AIHA has sent a letter to Congress requesting this GAO study. Until now it seemed as if our request fell on deaf ears.

But recently we received some positive signs about this issue. When the House Committee was debating the MSHA/OSHA reform bill, there was a proposed amendment by Rep. John Kline (minority leader on the Committee) to remove

the OSHA portion from the bill. Contained in this amendment was a section that called on the Government Accountability Office to conduct a study on whether or not it would be advisable to transfer NIOSH to the Department of Labor and to establish NIOSH as an independent institute within DOL. The amendment did not pass but it sure is nice to see that our continued efforts at least made a small impact.

At the Agency

Activity continues at a torrid pace at OSHA. It is becoming more and more obvious that under the leadership of Dr. David Michaels the agency is working at a pace that has been unheard of for several years. The number of issues being pushed forward continues to increase. Yet it remains to be seen how many of these will be concluded any time soon. But here's a quick look at some of them:

Injury and Illness Prevention Program (I2P2)

Touted as one of the top priorities of Dr. Michaels, OSHA concluded a series of stakeholder meetings on this issue earlier this week. The agency has already announced it will bypass the Advance Notice of Proposed Rulemaking and will instead move directly to a Small Business Review Panel. After that they will propose a rule, seek OMB review, conduct public hearings and then issue a final rule. Trouble is it is likely to take some time before anything becomes final. Word is OSHA has publicly stated they will not be proposing any rule for at least 18-24 months. That means we are several years from any final rule. And you can likely add "lawsuits" to this as they move forward.

Globally Harmonized System (GHS)

OSHA continues working on a final GHS rule. No word on when this might occur. No word either on whether or not there is enough opposition that lawsuits may be filed when the final rule is announced.

Combustible Dust

Seems to be taking a long time but OSHA is moving forward. Stakeholder meetings have concluded and OSHA hopes to present a proposed rule to a small business review panel by April of 2011. To show just how long it takes to move things forward – the White House announced it hopes this rule is the first major rule to be concluded by this administration.

Cranes and Derricks

Finally! In late July the administration announced this final rule that has been in the works for years.

MSD/OSHA 300 Log

The rule returning the MSD column to the OSHA 300 Log is moving forward. The final rule has been sent to the Office of Management and Budget for review and OSHA announced it will not be sending the rule to a small business panel for

review. OSHA hopes to finalize the rule this month. Whether or not that happens there are many who say several lawsuits will be filed opposing the rule.

Electronic Recordkeeping

The comment period has closed. We await further word from OSHA.

Diacetyl

The agency (under both Republicans and Democrats) has waited so long to adopt a standard on diacetyl that hardly anyone is still using the chemical. There is now word that many of the substitutes for diacetyl are causing the same problems. OSHA has decided to put this on hold until NIOSH can conclude a study on these substitutes.

Bigger Issues Loom

Even though OSHA seems to be moving forward on several issues, there are some bigger issues that will need to be addressed –

VPP – What will this program look like in the coming year? Will OSHA succeed in cutting much of the funding for this program?

PELs – The agency has put together a “working group” to consider options for updating the PELs. Will a workable option be found? Will it require Congressional action? Can industry and labor agree on the solution?

Rulemaking Process – Much of the discussion on I2P2 and PELs involves the whole issue of “rulemaking”. Can the agency make serious headway in streamlining the process? The administration supports taking a look at this issue.

And finally – the elephant in the room – ERGONOMICS! Is this administration preparing to move forward on an ergo standard? Probably not, but there is considerable worry within industry that the I2P2 proposal, along with the MSD/OSHA 300 Log proposal, are simply back-door approaches to a push for an ergo standard. Ain't gonna happen anytime in the next two years – but all bets are off if the Democrats retain the White House in 2012!

OSHA at Forty!

Dr. Michaels recently put out a statement titled “OSHA at Forty: New Challenges and New Directions”. This statement (actually some 10 pages) provides the best look yet at where Dr. Michaels and the administration hope to take OSHA in the coming years. It's a great look at some of the important issues facing the agency and the health and safety of workers. AIHA submitted comments to Dr. Michaels on his statement. To see AIHA's response go to <http://www.aiha.org/news-pubs/govtaffairs/Documents/OSHA%20At%20Forty.pdf>

It's really interesting to hear the feedback on this document. Someone called and asked if I really thought OSHA could accomplish any of this in the coming years. While I can't predict what will or what won't be accomplished, I think the caller missed the point. I view this document in a similar way as the "OSHA Listens" meeting held earlier this year. It doesn't really make any difference what comes of the recommendations or if you even agree with them, the more important purpose is accomplished – that the agency is listening to stakeholders and the agency has long-term goals in mind.

The Way I See It!

For decades it has been a given that if you are elected to Congress, the odds of being defeated in future elections is slim. Once you achieve that election victory you can almost be assured of staying in office until you decide to retire. The political "machines" favor incumbents in any election. What is also interesting is the fact that when voters are surveyed they always say "we should replace everyone in Washington". Of course what they really mean is replace everyone but their own Representative or Senator.

Well, guess what? This may be the first year ever where being an incumbent is creating more problems than being an unknown taking on an incumbent. The citizens are restless and that means trouble for the politicians.

During some of my travels across the country I have the opportunity to visit with many, both those in the occupational and health profession and those outside of the profession. I keep hearing the same thing this year. Voters are simply fed up with the political bickering and the gridlock in Washington and they don't care which party they are talking about. Primary and special elections held earlier this year already show "upsets" as incumbents are being defeated. And these incumbents aren't doing themselves any favors when they openly talk about "not facing any more controversial votes until after the election" or even more disturbing seeing both parties with individuals facing ethics violations.

Of course the concern of OH&S professionals and organizations like AIHA is geared towards worker health and safety issues. And yes, it does become frustrating when Congress or an administration can't seem to recognize that "compromise" might be needed to enact meaningful rules and laws. But it seems to be getting worse each year.

It might be too soon to make predictions, but don't be surprised if we see the largest number of incumbents defeated in the November election than we have ever seen before. If that occurs – will it be a wakeup call? Don't bet on it but it will at least make many voters feel better.

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. Simply go to the AIHA home page. Click on "government affairs", located left side under access to information. Once in government affairs, click on "Federal Legislation Action Center". You will need to sign in as this is a members-only section. Also available within this Action Center is the opportunity for any member to directly contact their elected officials in Washington simply by inserting their zip code. You can send an email or learn how to contact them by phone or mail. Take a look!

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.