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HAPPENINGS FROM THE HILL

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Recess About Over – Time to Get Back to Work!

As Congress continues its August recess, expected to return to Washington just after Labor Day, now is a good time to take a look at some of the important issues it will face upon its return – at least issues regarding occupational health and safety.

The Budget

If it seems like we are always talking about approving the budget, we are! If there is one thing we can rely on from Congress, it is that they will always face a deadline approving the budget. The fiscal '08 budget is to begin on October 1, which doesn't leave a lot of time. And while several appropriations bills may be approved by then, don't count on the one that includes OSHA and NIOSH in this list.

The appropriations bill that includes OSHA and NIOSH is one of the largest bills to come before Congress, one of the reasons it always seems to be the last one approved. Last year, they didn't even approve a bill. Congress simply enacted a continuing resolution that ran for an entire year; essentially giving OSHA and NIOSH the same amount of money in '07 as they received in '06.

Now we await action on the latest effort.

Over in the House, the bill has been enacted providing OSHA \$503.5 million. The Senate has yet to approve its bill, but the appropriations committee has approved \$498.5 million. When both the House and the Senate approve bills, they will then sit down and work out any differences in the bills.

But I think what is more important than the total dollars are some of the specifics behind the bills and the various issues included in report language.

In the House –

- Dollars for enforcement will be increased over the President's request.
- Dollars for compliance assistance will be decreased from the President's request.
- \$10 million was restored for the Susan Harwood Training Grant program.

Report Language added the following:

- ✓ The Committee is concerned about OSHA's lack of progress in developing and issuing important safety and health standards and the failure to meet the agency timetable for action in the semi-annual regulatory agenda. Therefore, the Committee directs OSHA to provide Congress with detailed timetables on beryllium, silica, cranes and derricks, confined space entry in construction, and hazard communication global harmonization.
- ✓ The Committee is dissatisfied with ergonomics activity. OSHA is directed to develop guidelines for 13 industries and to submit a timetable.
- ✓ The Committee is dissatisfied with progress on the PPE standard. A provision is included to ensure that these protections will finally be put in place.
- ✓ The Committee is dissatisfied with lack of action for protection of health care workers in the event of an influenza pandemic. OSHA is directed to develop a permanent standard on an expedited basis and submit a report within 90 days of enactment.
- ✓ The Committee is dissatisfied with the OSHA response to the serious health hazard posed by exposure to diacetyl. OSHA is to develop a permanent standard on an expedited basis and again submit a report to Congress within 90 days of enactment.
- ✓ And finally, the Committee made sure that the prohibition on OSHA from enforcing annual fit testing for respirators for occupational exposure to TB was not included.

In the Senate –

The bill has yet to be approved by the full Senate but has been approved by the Appropriations Committee. Here's what their report language says:

- Dollars for enforcement will be increased over the President's request.
- \$10 million was restored for the Susan Harwood Training Grant program.

Report Language added the following:

- ✓ The Committee is concerned about the pace of OSHA standards, specifically the personal protective equipment standard and the diacetyl standard. OSHA is directed to provide a detailed timetable for action within 30 days of enactment of the appropriations bill.
- ✓ The Committee requests a report from OSHA detailing a plan for developing and issuing a standard on an influenza pandemic.
- ✓ The Committee is concerned about ergonomic injuries and directs OSHA to provide a report within 30 days on future steps to be taken.
- ✓ The Committee also refused to include language that would ban OSHA from enforcing annual fit testing for respirators for occupational exposure to TB.

Got all of that! Of course, this is all included in report language which isn't really law, but most treat the language as such. It will be very interesting to see how much of this remains when the House and Senate get together to work out their differences. And, while much of the report language from the two sides appears the same, note the subtle difference in wording. The House uses language that specifically directs OSHA to take an action such as putting a standard in place. Much of the Senate language directs OSHA to come back with a timetable on future action. If I were to guess, I would say the Senate language will more than likely win out.

Legislative Issues of Particular Interest

While there are numerous legislative measures introduced pertaining to OHS, only a few might receive any kind of serious consideration in the coming months.

Asbestos - Senator Patty Murray (D-WA) reintroduced her bill that would prohibit the importing, manufacturing, processing or distributing of asbestos-containing products in the U.S. Since introduction of her bill, two similar bills have been introduced in the House. Murray's bill (S 742) has passed Committee scrutiny and is now on the full floor of the Senate. This bill has a better chance of passage than in years past, but will still face serious debate. AIHA is in the process of finalizing comments on the bill, which also includes directives to increase research and educational efforts on the health concerns with exposure to asbestos.

Diacetyl – HR 2693 has been introduced to require OSHA to issue rules to protect workers from diacetyl, commonly referred to as the “popcorn-flavoring issue”. The bill has passed the House Committee and awaits action on the floor of the House. However, OSHA has also been active on the issue by announcing it would initiate a national emphasis program for facilities using diacetyl. Since announcement of this emphasis program, OSHA has now expanded the program to include all butter-flavoring chemicals in the microwave popcorn industry. While this is sure to receive support from many, I'm not sure everyone is pleased. The OSHA program will only cover microwave popcorn facilities and will not be expanded to cover the entire food flavoring industry. How all of this will work out, considering the fact that both the Senate and the House mention this issue in the appropriations bill, will be interesting. Expect a few fireworks on this issue before all is said and done. AIHA came out in support of the legislation, but stressed that there are a considerable number of chemicals that demand attention as they relate to exposure limits.

Personal Protective Equipment – HR 1327, a bill that would require OSHA to finalize the PPE standard within 30 days of enactment is currently on hold. The reason is because OSHA has stated they will finalize the standard by November. There is also a lawsuit pending against OSHA requiring the agency to finalize the rule. The lawsuit is also on hold pending OSHA's action in November. OSHA says it will meet the deadline but we'll wait and see.

There are numerous other legislative measures pending in Congress, but I mention these three for a couple of reasons. One is again the fact that I believe all three are serious measures that will receive consideration. But the second reason is that I find it interesting that we are seeing a distinct shift in the types of legislative measures considered by Congress. Notice that these measures, as well as others such as a safe-patient handling standard and the many directives within the appropriations reports, all deal with the issue of standards at OSHA or EPA. I don't ever recall a time when Congress addressed the issue of specific standards with such intensity. A bigger debate might be whether or not Congress should be directing a federal agency such as OSHA to impose standards. On the other hand, the involvement of Congress could signal the fact that elected

policymakers have had enough of what they consider “inaction” by specific agencies.

Will the U.S. Adopt the Globally Harmonized System?

OSHA has announced it is working to issue a final regulation implementing the Globally Harmonized System for Chemical Classification and Labeling (GHS) by December 2008. The GHS would simplify hazard communication requirements by using one set of labels, pictures and symbols for haz com. The United Nations has said it wants all countries to adopt the GHS by 2008.

On the surface, adopting the GHS does not seem to be a controversial issue. However, adoption would require OSHA to amend the hazard communication standard. And that could open up all sorts of issues. When adopted, OSHA believes an extensive period of time would be required to phase in the new requirements. AIHA has long supported adoption of the GHS in the U.S.

Other OSHA News Items -

- OSHA has introduced an enhanced Compliance Assistance Specialist (CAS) Directory that is now available on OSHA’s web site. This new directory allows users to find their local CAS by directing them to the nearest OSHA Area Office. Users in states which operate their own OSHA-approved safety and health programs are provided with contact information for their state agency.

- OSHA has formed a new directorate to increase the effectiveness of the agency’s in-house and distributed training program. The new Directorate of Training and Education will provide leadership and management of the OSHA Training Institute (OTI), the OTI Education Center Program, the Outreach Training Program and other compliance assistance and training programs. OTI courses and seminars are designed for persons responsible for enforcing or directly supporting the OSH Act, for private sector employers and employees, and federal personnel from agencies other than OSHA.

- The Bureau of Labor Statistics has released the 2006 fatal occupational injury totals. In 2006, there were 5,703 fatal work injuries as compared to 5,734 in 2005. Service sector industries accounted for 47 percent of the deaths and goods-producing industries accounted for 44 percent. Government workers accounted for 9 percent of the fatality total. The most frequent type of fatality was highway incidents accounting for nearly 25 percent of the total. The number of Hispanic workers killed on the job rose in 2006; however the rate of fatalities was lower than in 2005. As for individual sectors, construction accounted for 1,226 fatal work injuries, up 3 percent over 2005.

How Come Others Seem to Succeed When Updating Occupational Exposure Limits?

A good question. Especially since word was received that the Ontario government in Canada is proposing new or updated occupational exposure limits (OELs) for 21 hazardous workplace substances. The government put an annual review process for OELs in place in 2004. Since 2004, the government has revised, updated or added 131 OELs. That’s not a misprint! 131 OELs in three years. Perhaps we should send a U.S. delegation up there to find out how they do it while we here in the U.S. are still dealing with some permissible exposure limits that were set more than 35 years ago?

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. 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.