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Industrial Hygiene Congress OSHA  
NIOSH AIHA Occupational  
OSHA EPA U.S. House of  
Occupational Health and Safety  
House of Representatives U.S.

## **HAPPENINGS FROM THE HILL**

### **American Industrial Hygiene Association Government Affairs Department**

*Aaron K. Trippler, Director*  
703-846-0730 [atrippler@AIHA.org](mailto:atrippler@AIHA.org)

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### **Congress Takes A Break for the Holiday - - No Budget Yet In Sight**

Congress left town on November 16 for a two-week Thanksgiving break, planning to return on December 4. And they left town having passed only one appropriation bill (Defense) for the 2008 fiscal year, which started on October 1.

Actually, there was hope that the Labor/HHS/Education bill might be enacted as Congress approved the spending bill in early November, only to see the President veto the bill on November 13 and the veto override fail on November 15. Of course, the veto was expected as the President was not pleased with the increased spending in the bill.

What happens next? If history is any indication, this appropriations bill will be lumped in with many of the others in what is called an "omnibus spending bill" and then approved. At the present time, OSHA, MSHA and NIOSH are living under a second continuing resolution, this one set to expire on December 14. I don't hold out much hope that the appropriations and other language included in the bill that was passed in early November remain in a final bill – whenever that happens.

In addition to the ongoing debate over the budget, Congress left town not having enacted any other major legislative measures that address occupational health and safety. The asbestos ban (passed by the Senate), the requirement for a diacetyl standard (passed in the House), the worker's protection act (still awaiting a first hearing) – all of these measures remain in limbo. And when Congress does return, expect them to limit their work to the budget before adjourning the first session of the 110<sup>th</sup> Congress.

Defending OSHA – Defending NIOSH – These are becoming difficult tasks in Washington these days!

## **OSHA Issues Final Personal Protective Payment Rule**

After nearly nine years waiting for a new standard that requires employers to pay for employee personal protective equipment, after a lawsuit filed to force OSHA to finalize the standard, and after legislation was introduced in Congress forcing OSHA to enact a final standard – WE HAVE A STANDARD! On November 15, OSHA issued the final standard that affects general industry, shipyard employment, marine terminals, longshoring, and construction. The rule will go into effect 90 days from November 15 and must be implemented within six months, so employers have until May 2008 to change their existing PPE policy to accommodate the final rule.

The new rule will not compel employers to supply PPE where none had been required before, and the rule won't dictate what PPE employers must mandate. According to OSHA Administrator Ed Foulke, "Simply put, the rule for employer PPE applies only when equipment is used by an employer to comply with one of the PPE requirements of OSHA standards". Because of the importance of this standard, you may wish to review either the summary of the standard or look at the entire standard. Simply go to the OSHA web site at [www.OSHA.gov](http://www.OSHA.gov) for further information.

## **Regulatory and Legislative Activity Update –**

### **- A Quick Look at Other Regulatory and Legislative Activity**

Cranes and Derricks: OSHA originally intended to revise the cranes and derricks rule this past October. According to sources, the Preamble is still being written and the proposal has not yet been sent to the Office of Management and Budget for review. A negotiated rulemaking advisory committee completed their work in 2004. Word now is that the rule will probably take another six months.

Confined Spaces: This rule for construction is way overdue. OSHA said this was a priority in 2007 and thought they would miss the February deadline, but not by much. While the rule has been reviewed by the Office of Management and Budget, no word on when it might finally be issued, though some think it still might come out by the end of the year.

Globally Harmonized System: While the United Nations hoped that countries would adopt the GHS by the end of 2008, and many have, it looks as though the United States will not be one of them. OSHA had hoped to issue a notice of proposed rulemaking this past month, after asking for comments several months ago. It now looks as though no date has been set. Part of the reason the U.S. may miss the deadline is that OSHA is just one of four agencies that must adopt rules implementing the GHS. The others are EPA, the Dept. of Transportation and the Consumer Product Safety Commission. OSHA is probably the most important of these four agencies and is the only one moving forward at this time.

Diacytyl: OSHA announced a little over a month ago that it would launch a rulemaking on this food flavoring chemical, but no word yet as to when it may begin the process. The concern of many is that this is an existing problem and for OSHA to address it through rulemaking will undoubtedly take several years.

National Response Plan: NIOSH Director Dr. John Howard recently testified before Congress that he would like to see the worker health and safety annex of the National Response Plan elevated to an "essential function" in the plan. Under the existing plan, FEMA would have to activate OSHA's

involvement in any disaster response. In this scenario, OSHA could not respond on worker health and safety issues for first responders until requested.

Nanotechnology: Congress seems to be pulled in different directions on this issue. Some believe that there should be a single government office in charge of the National Nanotechnology Initiative and others believe that such a move would be counterproductive to the program. As this Initiative comes up for reauthorization, expect a huge debate.

Multi-Employer Citation Policy: Back in April, the Occupational Safety and Health Review Commission ruled that OSHA could not cite construction multi-employers for health and safety violations caused by employees of sub-contractors. OSHA policy has been that although employers may not have employees of their own exposed to a safety hazard, they still may be cited for a safety or health violation if such employers create the hazard, if they control the work site, or if they have the authority to correct the hazard to which another's employee is exposed. Notwithstanding the Review Commission ruling in April, OSHA is still enforcing their policy until a court rules on the issue. The Eighth Circuit Court of Appeals will rule on the issue. All briefs have been submitted.

## **Mining Bill Could Address Permissible Exposure Limits (PELs)**

In a controversial move, a mining bill has been approved by a House Committee that not only addresses mining safety, but makes a radical change to exposure limits. The bill, known as the S-MINER Act (HR 2768) makes several recommendations on how to improve miner safety. But the section of interest to many, including AIHA, is the one that addresses exposure limits.

Under the bill, MSHA would be required within 30 days of receiving a NIOSH recommended exposure limit (REL) for a chemical or other hazard to miners, to adopt the REL as a permissible exposure limit. The Labor Secretary would be allowed to review the "feasibility" of any PEL established in this way.

Opponents to the recommendation state that such an approach would set a bad precedent for overriding agency discretion and experience. Even more important, opponents are afraid that the approach could be applied at a later date to OSHA. AIHA is monitoring this legislation very closely.

## **State Legislatures Begin to Gear Up for 2008**

Several States have begun to post pre-filed bills for the 2008 legislative sessions. AIHA national will again be monitoring state legislative activity to keep local sections and others informed of issues that may be important to the profession.

The first bill to receive our attention is Florida Senate Bill 652. This bill would appoint a task force on workplace safety to issue recommendations on ways by which the state may effectively ensure that all state departments and agencies, all county governments and municipalities could be covered by the OSH Act. AIHA national and our Florida local section plan on actively being involved with this legislation as it moves through the process. ASSE national has taken the lead on the issue and we hope to coordinate our efforts with them.

## **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.**