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HAPPENINGS FROM THE HILL

American Industrial Hygiene Association Government Affairs Department

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America – We Have A Budget! No We Don't! Yes We Do!

Your guess is as good as mine on this one. At the time of this writing, Congress was in the process of attempting to decide the fate of the fiscal 2008 budget, which was to have started on October 1.

Since October 1, the federal government has been running on continuing resolutions, which in effect means that each government department and agency is allowed to spend the same amount of money they were spending previously. The most recent continuing resolution was set to expire on December 14. There are several scenarios being played out on what might happen before Congress adjourns for the year.

- 1) One scenario heard on the Hill yesterday is that Congress will eventually adopt a continuing resolution that would run through the 2008 fiscal year. That would mean no increase in spending for any department or agency. While this scenario was expressed by someone "in the know" I really can't see this happening.
- 2) The second scenario is that Congress enacts a continuing resolution that would last only until after the first of the year. Then, when Congress returns in January they will address the issue.
- 3) A third scenario is that Congress will lump all the remaining appropriations bills into one huge omnibus spending bill and enact it. (This is usually what happens). Unfortunately, there is no way to know what OSHA, NIOSH, MSHA, etc. might receive in such a bill. The concern is that it looks as if the Democrats might go along with the original spending request by the President so long as they are allowed to include their "special requests" for funding in their individual districts. If I were to guess, this is what will eventually take place.

And so it goes!

Semi-Annual Regulatory Agenda Published

This past week the Federal Register contained a portion of the most recent semi-annual regulatory agenda from federal agencies. Note I said a “portion” of the agenda. It seems the government has decided to publish only a portion of the agenda items in the Federal Register. The rest can be found online at www.reginfo.gov. Let’s not go into the reasons for this switch, but it does seem to be a little more difficult to find what one is looking for. Anyway, here are the major issues impacting occupational health and safety found in the most recent agenda for OSHA:

Prerule Stage

Occupational Exposure to Crystalline Silica. The current agenda shows that the peer review on the issue is to be completed in January 2008. The scope of the rulemaking and the costs and benefits are still under development.

Occupational Exposure to Beryllium. The small business review is expected to be completed in January 2008. OSHA says this information will be used in developing a proposed rule.

Emergency Response and Preparedness. The agency asked for comments on this issue and the record closed this month (December). No plans have been announced on what the agency will do next.

Methylene Chloride. OSHA plans on undertaking a complete review of the existing standard to determine if any action is necessary. Comments were requested this past summer and the review will be completed by June of 2008.

Proposed Rule Stage

Confined Spaces in Construction. OSHA hopes to extend the existing general industry confined spaces rule to construction. A notice or proposed rulemaking was announced this past November.

Walking Working Surfaces and Personal Fall Protection Systems. A rule was proposed in 1990, but since then new technologies and procedures led OSHA to realize that the proposed rule was out of date. So OSHA hopes to announce another notice of proposed rulemaking in April of 2008.

Cranes and Derricks. OSHA began addressing this issue back in 2002 with intent to establish negotiated rulemaking. Rulemaking negotiations were completed in 2004 and a notice of proposed rulemaking is expected in January 2008.

Standards Improvement. OSHA continues to review existing safety and health standards for duplicative, unnecessary and inconsistent wording. Phase III of this project continues with a notice of proposed rulemaking expected in January 2008.

Hazard Communication. OSHA is in the process of completing a peer review of economic analysis. OSHA is considering modifying the haz com standard to make it consistent with the GHS. Many agree this needs to be a priority.

Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl. After denying a request for an emergency temporary standard and under the threat of Congress forcing OSHA to adopt a standard addressing diacetyl, the agency announced that it would

pursue a rule controlling exposure to this chemical. The agency held stakeholder meetings in October and hopes to initiate a small business review in January 2008.

Final Rule Stage

Employer Payment for Personal Protective Equipment. The final rule was announced in November.

Updating OSHA Standards Based on National Consensus Standards. This is a multi-phase process with various rules. The most recent update pertained to the PPE consensus standard covering head, foot and eye protection. A public hearing was held on this issue in early December.

Long-Term Actions

Hearing Conservation Program for Construction Workers. While a general industry standard is in place, OSHA has not yet decided whether or not to expand this to construction workers.

Ionizing Radiation. No action pending, even though OSHA acknowledges that the exposure regulations pertaining to ionizing radiation were adopted in 1974 and needs to be updated.

If this agenda is correct, January through April should be a very time at the agency. However, expect many of these issues to be delayed several months. Besides, we are in the middle of an election cycle.

MSHA -

Of the dozen or so items on the agenda for the Mine Safety and Health Administration, most of these are actions as a result of the Miner Legislation enacted by Congress in 2006.

Speaking of MSHA, it will be very interesting to see just who is in charge of the Agency after January first. If you recall, President Bush appointed Richard Stickler to head up the agency. However, this appointment had to be done during a Congressional recess because the Senate would not confirm him to head up the agency. Because it was a recess appointment, Mr. Stickler can only serve through the end of the first session of this Congress, which is sometime this month. Word has it that President Bush will not reappoint Mr. Stickler to head up the agency, but they may keep him on in an acting capacity of some kind.

NACOSH Finally Holds a Meeting

After more than a year, the National Advisory Committee on Occupational Safety and Health finally held a meeting to receive and provide input on occupational health and safety issues. Both OSHA and NIOSH personnel provided updates on the many ongoing projects at the agencies.

Thought it might be interesting to provide you with a few quick notes on some of the discussions:

NIOSH provided the Committee with an update on the National Occupational Research Agenda.

Begun in 1996, NORA enters its second decade with numerous topics under consideration, including MSD's, motor vehicle accidents, hearing loss, chemical exposures, and health disparities. The NORA project has been one of the most successful projects undertaken by NIOSH in many years and Dr. John Howard is really the one who deserves the credit for this. In addition to NORA, NIOSH is working on other issues, including nanotechnology research.

OSHA personnel provided several updates. In addition to a discussion on the regulatory agenda (see related story), program updates were provided on OSHA's cooperative programs. OSHA reported that there are now 462 alliance agreements in place, the SHARP program has 1,100 participants, the Voluntary Protection Programs include 1,885 worksites, and there are 161 active strategic partnerships.

OSHA's "Top 10" Most Cited Violations

It's been in the press for some time now, but I think it's worth repeating. What is it? It's the 2007 list of OSHA's 10 most cited violations. In addition to providing the list of the top 10, I found the comment from Richard Fairfax, OSHA's Directorate of Enforcement Programs quite enlightening. Mr. Fairfax calls many of these top ten "good violations". In other words, those violations that inspectors find during workplace inspections and cause the most danger to workers.

Here are the top ten for 2007:

1. Scaffolding
2. Fall Protection
3. Hazard Communication
4. Respiratory Protection
5. Lockout/Tagout
6. Powered Industrial Trucks
7. Electrical – Wiring
8. Ladders
9. Machine Guarding
10. Electrical – General Requirements

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.

And Finally –

Have A Healthy, Safe and Happy Holiday!

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