



Happenings From The Hill

American Industrial Hygiene Association Government Affairs Department

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David Michaels Confirmed – Will Agenda Change?

Dr. David Michaels was finally confirmed to be Assistant Secretary of Labor for OSHA on December 3. The Senate approved the nomination, made by President Obama, without any debate. Now, the question everyone is asking is whether or not the OSHA agenda will change.

But prior to discussing the Michaels agenda, I should note the excellent job Jordan Barab did as Acting Assistant Secretary. This was one of the finest in many, many years. Jordan stepped in and immediately set out to move forward many of the stalled projects at the agency. He accomplished this and more. What I kept hearing from many stakeholders was that Jordan was willing to listen to all sides of an issue and he raised the morale of agency employees. A job well done! Let's hope Dr. Michaels does the same.

Dr. Michaels has, over the course of the last few months, provided hints on some of the issues he hopes to pursue at the agency. Among these are moving forward with a combustible dust standard, addressing silica and beryllium, finalizing the GHS proposal, and even suggesting a possible foray into the controversial issue of ergonomics. He has also indicated his support to speed up the standard-setting process, increase enforcement, provide a "rigorous evaluation" of the VPP program, and overall change the culture of worker health and safety.

Whether or not Dr. Michaels can elicit the support of industry on many of these issues remains to be seen. But let's hope industry gives him a chance to propose workable solutions to the many problems the agency has faced the last few years.

OSHA Regulatory Agenda Released

Earlier this week the Department of Labor released its semi-annual regulatory agenda, including issues at the Occupational Safety and Health Administration. Here's a look at a portion of the agenda, with a few comments on each.

Prerule Stage

Occupational Exposure to Crystalline Silica – OSHA plans to publish a Notice of Proposed Rulemaking in July 2010. The rulemaking would update existing permissible exposure limits and establish additional provisions to protect workers from exposure. This is one of those issues Dr. Michaels has stated he hopes to move forward. Remains to be seen if the agency can have a NPRM ready by July.

Occupational Exposure to Beryllium – OSHA hopes to initiate a peer review in March 2010. Again, OSHA hopes to update the Permissible Exposure Limit. This issue has been around for nearly 10 years when OSHA was petitioned to issue an emergency temporary standard. Listing it in the pre-rule stage generally means this issue is a long way from completion. This may be a priority of many, but don't look for anything on this issue for at least the next two years.

Occupational Exposure to Diacetyl – In discussion since 2006, the agency hopes to develop a PEL for diacetyl and develop a final rule. But this issue has been delayed repeatedly. OSHA was prepared to announce an Advance Notice of Proposed Rulemaking in the past year but this ANPR was pulled. Now, OSHA hopes to initiate a peer review by late 2010. Hard to say why OSHA is delaying this issue so long. California has already proposed their own standard and many expected OSHA to move quickly on the issue. Delaying the peer review to late 2010 means this may also be several years from completion.

Combustible Dust – This is one issue where the pre-rule stage may be correct. The agency issued an Advance Notice of Proposed Rulemaking in October and is planning stakeholder meetings yet this month. In the past, some have said OSHA does not need a combustible dust standard as it has many others standards it can use for enforcement. But that hasn't stopped the effort. Congress has even become involved with legislation introduced to require OSHA to enact a standard. Expect this issue to move forward as the only one in the pre-rule stage that has a chance of completion during this administration.

Miscellaneous Pre-Rule Issues – Other issues listed in the pre-rule stage are:

- Emergency Response and Preparedness
- Methylene Chloride
- Bloodborne Pathogens
- Airborne Infectious Diseases

Proposed Rule Stage

Confined Spaces in Construction - This rule would extend confined spaces rules for general industry to confined spaces in construction. Frankly, this is one of those issues many expected OSHA to move forward as soon as the new administration took over. The Notice of Proposed Rulemaking comment period ended way back in 2008. OSHA is still analyzing comments.

Hazard Communication – The long-awaited change to the Haz Com Standard by adopting the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The advanced notice for this issue began back in 2006 and has progressed to the point where comments are due on the Notice of Proposed Rulemaking the end of 2009. OSHA hopes to have this completed in 18 months. That may be wishful thinking. While many believe we must adopt the GHS as soon as possible, it will be interesting to see how many concerns are raised in the NPRM comments.

Occupational Injury and Illness Recording and Reporting Requirements – OSHA hopes to announce a NPRM in early 2010. We may just see this happen. The purpose of this rulemaking is to again require the recording of work-related musculoskeletal disorders on the 300 log. Two things to be aware of; 1) the whole issue of MSDs will be very controversial and 2) OSHA may decided to expand its look into recordkeeping requirements, perhaps not with this rulemaking but with additional rulemaking.

Miscellaneous Proposed Rule Issues – Other issues listed in the proposed rule stage are:

- Standards Improvement
- Cooperative Agreements

Final Rule Stage

Cranes and Derricks in Construction – OSHA hopes to issue a final rule in July 2010. Many expected the new administration would make this the first rulemaking to be completed. Unfortunately it has dragged on and there is hope the July 2010 date is real. While OSHA has dragged its feet on this rulemaking several states and local governments have addressed the issue on their own.

Long-Term Action

Hearing Conservation Program for Construction Workers – OSHA continues to collect and analyze information on this issue. The ANPRM was completed way back in 2002. Gives you some idea as to how long it now takes to complete rulemaking.

If you wish to review the entire semi-annual regulatory agenda, simply go to http://www.regulations.gov/public/component/main?_dmfClientId=1260375473562&_dmfTzoff=300 and search under Department of Labor.

Additional Issues for Discussion

While the semi-annual regulatory agenda provides a good overview of the issues deemed important by the agency, there are several “off-line” issues that deserve discussion. I really feel these issues will receive more discussion than many of those on the regulatory agenda.

Safety and Health Program Standard - An issue long-supported by AIHA; we even suggested that the Protecting America’s Worker Act be amended to include a requirement for a written health and safety program. OSHA chief David Michaels has also hinted he supports initiating rulemaking for a safety and health program standard. On the Hill, AIHA has heard discussions that perhaps the House will hold hearings on this issue sometime in 2010. Don’t be surprised if this issue becomes more active.

State Plans - After the concerns with the number of construction fatalities in Nevada were aired and reports showed that federal OSHA lacked adequate oversight of State Plans, there has been considerable discussion about introducing legislation that would provide OSHA with more authority over these state plans. While this will continue to be discussed, I would be very surprised to see anything that would change the legal authority. The state plans are opposed to providing OSHA with more control and legislation is the only way to change the situation. This just won't happen. However, OSHA will become more active in providing recommendations and guidelines for these state plans.

Safe-Patient Handling – Congress has two separate bills introduced to require OSHA to enact a safe-patient handling standard. Past legislative efforts to require OSHA to enact standards have failed, but this one has a decent chance of passage. Nearly a dozen states have enacted safe-patient laws and regulations and labor feels this is an issue the federal government must address. Besides, this may be the best chance labor has to have some sort of standard addressing these types of ergonomic injuries. Look for this issue to be more active in 2010.

Recordkeeping – OSHA is currently conducting a National Emphasis Program on recordkeeping issues. The program is slated to run until around fall of 2010 when OSHA will then review the results. Underreporting of injuries and illnesses has become a rallying cry for many. You can add to this the issue of employers providing incentives for employees to forego the reporting of injuries and illnesses. A recent GAO report confirmed this and Congress is now becoming more interested in the issue. While the House says they have already held hearings on this issue, don't be surprised if you see the Senate hold a hearing in 2010. You may even see additional language inserted into the OSHA legislation pending in both the House and Senate.

Ergonomics – Notwithstanding the support of Dr. Michaels to address this issue, I'm not sure this issue will go anywhere in 2010. OSHA may continue to beef up its enforcement of ergonomics injuries through use of the general duty clause, but I doubt if they can move forward with any attempt at an ergonomics standard.

Voluntary Protection Program – I'm still not sure where this program stands. Most will tell you OSHA will simply assume more oversight of the program and they have no intention of shutting the program down. However, don't be surprised if this issue has its ups and downs in 2010. I base this on many things that when looked at individually do not concern me but when added together provide a little caution. I keep seeing quotes from OSHA personnel saying they will continue a "vigorous evaluation" of VPP.

Will We See a Budget?

Still awaiting a 2010 budget for OSHA and NIOSH. At the present time there is a continuing resolution set to expire December 18. There are two possible options. One is that Congress will conclude its debate on health care by that date and simply pass a budget bill before they leave for the year. The second option is they will not complete their health care debate and pass another continuing resolution until they return in January. Your guess is as good as mine on this one.

The Way I See It!

As Congress prepares to conclude the first session of the 111th Congress, it strikes me as “more of the same” when it comes to occupational health and safety. For many years we have complained that Congress does not consider OH&S important. Many can argue otherwise but the proof is there for all to see. In the 2-year 110th Congress not one piece of legislation was enacted that addressed occupational health and safety. It doesn't make any difference whether you support labor or industry, both sides blame the other.

Now we conclude the first year of another administration and again, not one piece of legislation has been enacted addressing any OH&S issue. Heck, it took the administration nearly a year to have someone confirmed to head up the agency.

I am well aware this country faces many problems – two wars, an economic downturn, health care for everyone. But is it asking to much for them to at least acknowledge there are other issues out there that impact the health and safety of workers?

Let's hope when Congress returns for the second year of this session of Congress they find a little time to consider other issues. Of course, even if they don't, rest assured someone will. I can bet the States will not sit back and allow occupational health and safety issues to go by the wayside.

Don't believe me? Just look at state laws and regulations in the last four or five years addressing issues such as safe-patient handling, combustible dust, crane and derrick safety, diacetyl, mold, methamphetamine laboratories, etc.

The leadership of occupational health and safety has migrated to the State Capitals and I expect this to continue for the foreseeable future.

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.