



Happenings From The Hill

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Congress Returns for 2nd Session of 112th Congress - **- Will it be “Groundhog Day” – the Sequel?**

Bill Murray kept repeating the same day over and over in “Groundhog Day”. Congress returned to Washington last week to begin the second session of the 112th Congress. Question is – will it turn out to be a repeat of the first session? Very little was accomplished in the first session other than a few of the major issues that had to be addressed (like the federal budget and the federal debt limit) and the difficulty in addressing those issues nearly resulted in a government shutdown.

As far as occupational health and safety – it’s easy to provide a summary of the successes – there were few. It could be considered a success that OSHA and MSHA received small increases in their budget and that NIOSH retained funding for the Education Research Centers. Other than that every issue had little, if any, interest.

Now, we begin the second session of this Congress and most believe there will again be little activity on occupational health and safety. In other words, we can probably expect the same thing over and over.

As I look down the road I see only a couple of issues that may draw some attention in Congress. One will again be the federal budget and the as now automatic cuts to take place in 2013. If Congress doesn’t address this issue, many federal agencies can

expect a 5-10% across the board cut in funding come 2013. I don't really expect that to happen so watching this issue play out will be interesting.

A second issue I believe may receive some serious consideration in 2012 is the issue of regulatory reform. With a dozen or so bills floating around to make changes to the regulatory process I would not be surprised if one or two of the suggestions make their way into law. Don't ask me which ones, but this issue seems to have a lot of traction.

Other than that I expect this to be a year "in transition". With the November elections looming ever closer there will be little activity that will entail controversial issues. Oh, by the way, the release of the President's 2013 federal budget has been delayed until February 13. Guess that means there won't be any complaints until then!

OSHA Showing Considerable Activity

The same "inactivity" in Congress is far different than what is happening at OSHA. In the past couple of years, OSHA chief Dr. Michaels has been moving the agency forward with what one could easily call an "aggressive" agenda. Unfortunately, many of the issues ran into a brick wall. But suddenly it seems as if Dr. Michaels has found that "second wind" and is moving several things off the table and into the mix.

Globally Harmonized System (GHS)

It's getting closer to being finalized, I think.. In October OSHA sent the final rule to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) for review. Normally OIRA takes about 90 days to review the rule and then sends it back to the originating agency with any comments. Many expected the final rule to be returned to OSHA this month, but now we hear OIRA has extended review of the rule because of continuing concerns from the chemical industry. It's hard to tell when the rule might be finalized and hard to tell just what seems to be the problem. Much of industry supports the rule yet others in industry have some concerns with the section on "unclassified hazards". Outlook – still have to think OIRA will send the final rule back to OSHA before spring. The GHS rule may be the only final rule issued by the agency in 2012.

Injury and Illness Prevention Program (I2P2)

Although there were many who hoped this issue (the number one priority for Dr. Michaels) would move faster, it really is moving as fast as can be expected. In early January OSHA released a white paper on I2P2 that recommends an injury and illness prevention program in all businesses. The white paper didn't contain very many details on what an I2P2 should look like but it was a huge step forward by showing the agency considers this a major issue.

No sooner had the white paper come out when the Small Business Administration (SBA) Office of Advocacy announced that the next step in the process is to hold small business review panels to discuss the rule. The SBA is now in the process of selecting the individuals who will serve on the panels. Once they have been chosen the participants will receive the first look at what OSHA has in mind for the proposed rule. SBA hopes to conclude the panels within 60 days and there is then hope that the final rule could be proposed within six months of that. However, don't look for the proposed rule to be announced prior to the November elections. No matter what happens, Dr. Michaels

deserve a lot of credit for moving the I2P2 forward.

Is There a Future for Updating the PELs?

In a somewhat surprise move, OSHA has placed on the regulatory agenda a prerule stage issue titled “Review/Lookback of OSHA Chemical Standards. In plain English this means “efforts to update the Permissible Exposure Limits, commonly referred to as PELS”.

The surprise isn’t only that OSHA addressed this issue but that it would be placed in the regulatory agenda. The agenda item doesn’t really call for rulemaking but rather a “request for information”, hopefully by August

OSHA has undertaken the issue of updating the PELs on numerous occasions over the past dozen years, all to no avail. This past year OSHA created an internal working group to discuss options for updating the PELs. This group came back with no viable options at this time which many thought meant the issue would once again be relegated to the back room. Dr. Michaels surprised many with placing this on the regulatory agenda and shows he has a real interest in seeking a solution for the problem.

AIHA has also been involved in this issue for many years. With the placement of this item on the regulatory agenda, AIHA hopes to bring back the AIHA working group on PELs to see if we can provide input to the agency. Many still believe the only option is some sort of congressional legislative measure, but one has to start somewhere.

OSHA Releases Semi-Annual Regulatory Agenda

OSHA released its semi-annual regulatory agenda in early January with many of the same issues as listed on the previous agenda. However, while the odds of any of this seeing completion during this regulatory agenda cycle are slim, it makes sense to take a quick look at what the agency sees as “important”.

Of the issues most important to AIHA:

Prerule Stage

Injury and Illness Prevention Program and Review/Lookback of OSHA Chemical Standards. These issues were covered in earlier articles in this edition of “Happenings”.

Proposed Rule Stage

Occupational Exposure to Crystalline Silica

This is an interesting one. Everyone has been waiting for this proposal for several years. OSHA’s draft proposal for general industry and construction has been under review at OIRA since February of last year (so much for having these reviews completed within 90 days). The review has been extended several times with both supporters and opponents of the rule providing input. A good guess will be that this proposal will not be forthcoming in 2012.

Improve Tracking of Workplace Injuries and Illnesses

OSHA has said it would issue a notice of proposed rulemaking on this issue in February. The two main issues in this proposal will probably be the switch to

electronic reporting of injuries and illnesses and the fact that OSHA wishes to change the trigger for reporting inpatient hospitalizations from three or more workers to only one. Will be difficult to see any movement on this in 2012.

Final Rule Stage

Confined Spaces in Construction

This has only been hanging around since 2003. There is already a confined spaces standard for general industry and this proposed rule would expand the rule to construction. OSHA says it hopes to send the draft rule to OIRA in June. Don't bet on it.

Globally Harmonized System

An earlier article in this edition of "Happenings" covered this issue.

The Way I See It!!

So everyone gets excited when the semi-annual regulatory agenda comes out! Seems we review it from one end to the other to see what our particular agency of interest has in store for the next six months. But does it really mean anything? Well yes and no!

I recall about a dozen years ago there was an outcry when the agency cut its semi-annual regulatory agenda from a list of about 50 items to one that contained no more than 15-20. If I recall, the reason for the cut in the number of items was so that "the agency could focus on a select few". Of course, when all was said and done it was impossible to even focus on those few issues.

But the semi-annual regulatory agenda is needed. While the odds of any of the issues being completed are slim, it does provide the agency and stakeholders with a roadmap to where the agency is headed. That's the good part! The bad part is that as soon as a new administration takes over the agenda is thrown out and a new one created. And even with a two-term administration we all know how hard it is to see a regulatory agenda item finished in eight years.

Perhaps we need to pare down the list a limit of 3-4 items on which the agency could focus its resources. And perhaps no new items can be added until one is finished (barring any emergency measures required). Probably wouldn't work but it can't be much worse than what we have now. That may sound like "giving up" but it is simply a look at the reality of what can be accomplished.

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.