I2P2 Proposed Rule: What is this, and what should we do to prepare

Brad Hammock
Partner
Jackson Lewis LLP
hammockb@jacksonlewis.com
703-483-8316
What is this?

- Rulemaking status
  - OSHA developing proposed rule and background materials
  - Initiate SBREFA panel process in June 2011
  - The Agency should provide some regulatory text as part of that process
What Will It Look Like?

- Build on SHARP, VPP, ANSI Z10 and OHSA 18001
- Potential elements:
  - Management leadership
  - Employee participation
  - Hazard identification and assessment
  - Hazard prevention and control
  - Education and training
  - System evaluation and improvement
Management Leadership

- Articulate policy of importance of safety and health.
- Establish short and long term goals for safety and health.
- Ensure adequate resources are devoted to safety and health.
- Lead by example in terms of the importance of workplace safety issues.
Employee Participation

- Encourage employee participation - solicit input, respond to employees, etc.
- Provide employees access to safety and health information.
- Encourage reporting of injuries and illnesses and leading indicators (near-hits, etc.).
Hazard Identification and Assessment

- Collect information for potential hazards (MSDSs, recordkeeping data, employee reports of injuries and near-hits).
- Do workplace walkthroughs and observe workplace hazards.
- Characterize and prioritize workplace hazards into severity of injury and likelihood of injury.
Hazard Prevention and Control

- Select controls based on hazard assessment, integrating the hierarchy of controls.
- Select appropriate PPE, as necessary based on engineering changes (as well as substitution).
- Plan not just for standard operations, but also emergency conditions.
Education and Training

- Train employees in aspects of safety and health program, including their roles in the process.
- Train employees in hazardous chemicals and other hazards identified. Make sure this training involves detailed description of protective measures taken.
- Ensure employees understand training. (Tip: Although often not required, document training received.)
System Evaluation and Improvement

- Verify implementation of the safety and health program:
  - Track hazards identified and controlled
  - Track injuries and illnesses occurring
  - Track near-hits and improvements in same
  - Track numbers of jobs not yet controlled

- Conduct internal audits and mock inspections.
Challenges for the Agency

- Standard v. regulation
- Significant risk
  - Must show a significant risk exists and a substantial reduction in that risk will result
  - The Agency is currently collecting information to support a reduction in risk
  - Must require more than a paper program?
Challenges for the Agency (cont’d)

- What to include in the scope of an I2P2 rule?
  - Hazards already covered by existing standards?
  - Hazards already covered by existing standards PLUS hazards covered by the General Duty Clause?

- Should there be exemptions based on size of business?
Challenges for the Agency (cont’d)

- How will OSHA enforce the standard?
  - If an employer fails to control a hazard for an existing standard, can the employer be cited twice - for the standard and under I2P2?

- Will OSHA “grandfather” in certain existing programs? If so, how?
What You Should do to Prepare?

- Keep track of OSHA’s actions
- Tell OSHA what works and does not work from your experience
- Review or implement your own programs as OSHA starts to develop the proposed rule