



Jeri Kubicki

Vice President, Human Resources Policy

October 7, 2009

Senator Tom Harkin, Chairman
Senate Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Senator Michael Enzi, Ranking Member
Senate Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Senator Patty Murray, Chairwoman
Subcommittee on Workforce Protections
Senate Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Senator Johnny Isakson, Ranking Member
Subcommittee on Workforce Protections
Senate Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Dear Senators Harkin, Murray, Enzi, and Isakson:

The National Association of Manufacturers (NAM) – the nation’s largest industrial trade association representing manufacturers of all sizes and industries-shares the Administration’s commitment to enhancing workplace safety. We recognize the important role that the Occupational Safety and Health Administration (OSHA) has in this effort. However we have concerns with the nomination of Dr. David Michaels of the George Washington University to serve as the Assistant Secretary of Labor for the OSHA. We request that the Senate Committee on Health, Education, Labor & Pensions hold a hearing to review these views before the final disposition of his nomination.

Dr. Michaels has advocated an approach to developing workplace regulations that would allow unproven and insufficient scientific evidence to be used as the basis for regulatory actions and has criticized efforts to ensure that regulations are based on the best available science and data. It is concerning that Dr. Michaels has rebuked widely accepted legal precedent that allows scientific certainty of evidence to be reviewed. In his book *Doubt is Their Product* Dr. Michaels asserts that the *Daubert v. Merrell Dow Pharmaceuticals Inc.* ruling, which requires scientific evidence to meet certain standards, creates a “social imbalance.”

Particularly since the administration has expressed a willingness to revive the ergonomics issue, it is important to review Dr. Michaels’ approach to the certainty of scientific principles used to develop regulations. In numerous writings Dr. Michaels has portrayed employers as “manufacturers of doubt” only driven to elude regulation, without acknowledging that key stakeholders should have the ability to legitimately question the validity of evidence used to develop regulations. The Senate should consider conducting a confirmation hearing that will provide an opportunity for Dr. Michaels to address these concerns.

Manufacturing Makes America Strong

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It is important to note that workplace safety performance has steadily improved for more than a decade in part, due to the open relationship between employers and the federal government. To continue this trend, the trust between employers and OSHA must not be abandoned. With that in mind, the Senate should have the opportunity to better understand Dr. Michaels' views on what role compliance assistance programs have served to aid in these long-term improvements in workplace safety while clarifying his views on the OSHA's current approach to regulatory enforcement.

Finally, it is not uncommon for nominees for this important position to be carefully reviewed by the Senate in a formal hearing. We respectfully request that Dr. Michaels' nomination be treated no differently than previous nominees. Dr. Michaels' nomination warrants a careful review and formal hearing to address these issues before his nomination proceeds.

We look forward to working with you on our shared goals for a strong economy, job creation in the United States and promoting safe workplaces.

With all best wishes I remain,

Sincerely,


Jeri Kubicki