Happenings On The Hill

American Industrial Hygiene Association
Government Affairs Department

Aaron K. Trippler, Director
703-846-0730 atrippler@AIHA.org

January 15, 2014

Congress Back in Town
Congress returned to Washington earlier this month to begin the second session of the 113th Congress, a session that will culminate in the much anticipated mid-year election in November.

While most do not expect 2014 to produce any legislation that will directly impact occupational safety and health there are still several issues that need to be monitored and discussed.

The Budget
Let's start with the FY2014 budget – you know, the one that was supposed to begin last October 1, then resulted in a government shutdown, then resulted in a continuing resolution and a “peace treaty” so everyone could go home for the holidays, then resulted in the need for another 3-day continuing resolution today (January 15) so that Congress would have time prior to Saturday to come up with the remainder of the FY14 federal budget without shutting down the government again.

Well, if all goes according to plan the Senate and the House will have agreed on this budget by the time you read this, or soon thereafter.

Let's take a look at what we know, or think we know about this budget:
Yup, that’s right. Congress gave OSHA some of the sequester cut back for the remainder of 2014. Most notably in this is a small increase for the whistleblower protection program, $100 million in continued funding for the State Plans, and about the same for enforcement spending as was previously appropriated for enforcement. The President had wanted to give OSHA $570.5 million, the House wanted to cut the figure to $443 million, so all in all not a bad deal.

Most notable in this budget is the fact that the Education Research Centers and the Agriculture, Forestry and Fishing Program remain funded through this year. If you recall, the White House recommended this funding be cut.

What’s Next? In February the President will begin looking at requests for the FY15 budget. Word is he has requested agencies to submit budgets that reflect a 5 percent decrease.

**Federal Contracting**

Another issue receiving discussion on the Hill is one that has been debated for years – “Should federal contractors be required to meet all safety and health regulations prior to receiving federal contracts?” Both sides make a good argument on this one. There are those who say that no federal contract should ever be awarded to a contractor who has violated any occupational safety and health regulation or law. Makes sense – and a point that AIHA made many years ago. On the other hand, there are those who say there are simply too many contracts that must be awarded to require such a law and/or regulation; and how do you determine which regulations or laws are more serious than others? Another argument is what do you do about a contractor who has many contracts yet only one contract has a violation?

Interesting discussion and likely one that will continue.
One of Last OH&S Champions to Leave Congress
If it wasn’t bad enough that many of the Members of Congress who strongly supported occupational safety and health are no longer serving, now one of the final remaining champions has decided to retire. Rep. George Miller (CA) is calling it quits after this session of Congress, having served in Congress since the early years of OSHA. Rep. Miller was for many years chairman of the subcommittee overseeing OSHA and was responsible for introducing many of the legislative bills to amend the OSH Act. Whether one agreed with the views of Rep. Miller or not, his retirement will leave a void in the number of supporters for OSHA and NIOSH.

Agency Activity Still High
The new year continued to bring a flurry of activity at agencies overseeing occupational safety and health. If the rest of 2014 is anywhere near the way it began we are in for a lot of activity and an increasing number of issues. Let’s take a look at the latest news on the hottest issues:

OSHA

OSHA Proposed Silica Rule
It looks as if this issue has become the “number one” issue of the agency in 2014. OSHA has been moving quickly to propose the rule and the next couple of months will determine if the proposal has any chance of being implemented.

The first deadline will take place January 27 when comments on the proposed rule are due at OSHA. Following that will be the onset of public hearings that begin on March 18.

This issue is causing a lot of debate both within and outside the beltway. While much of the debate revolves around the proposed exposure level in the rule there are other areas that will cause concern for opponents of this rule; i.e., projected costs, scientific rationale used, even a voluntary request for commenters to provide financial disclosures.

Outlook – While probably the number one issue in 2014, the issue will be difficult to finalize.

Process Safety Management (PSM)
OSHA is considering making changes to the PSM standard, a standard that protects workers inside chemical plants. OSHA published a Request for Information (RFI) asking for information on specific rulemaking and policy options. Comments are due March 10.

Proposed Rule to Improve Tracking of Workplace Injuries and Illnesses
OSHA’s proposed rule would require large employers to file their injury and illness data on a quarterly basis and smaller employers would be required to file on an annual basis. While OSHA says the proposed rule would not require employers to record any additional data from what is now required, the filing of the data is a huge change. OSHA believes the reporting requirement will improve worker health and safety. Opponent’s question the reasons behind this new requirement and are very concerned about “privacy” issues. Comments on the proposed rule are due March 8.
Outlook – Another issue that will receive considerable debate. Don’t look for the final rule to be implemented any time soon.

**Beryllium**
An issue still on the table at the agency. OSHA says it is still on track to publish a proposed rule in April of this year. Some say the agency has a draft standard ready to go, others say the agency is not that far along. Either way, the effort to lower the permissible exposure level for beryllium will be controversial. Insiders say the proposal would likely reduce the PEL from 2.0 micrograms of beryllium per cubic meter of air to 0.1 micrograms.

Outlook – Will be interesting to see if the agency can propose a rule in the midst of all of the other activity. Of course, the first step is to send a proposed draft to the White House for review – and we all know how long that can take (see two and half year review of the silica proposed rule).

**Safe patient Handling**
While legislation in Congress to require OSHA to enact a safe patient handling standard stands little chance of passage, the agency has decided on its own to move forward in addressing the issue, at least partly. OSHA announced today its plans to unveil new resources to protect hospital workers. The new efforts will include educational web resources with materials to help hospitals prevent worker injuries, assess workplace safety needs, enhance safe patient handling programs and implement safety and health management systems. Not a law or a standard – but a start.

**Combustible Dust**
OSHA issued a memorandum on December 31 with an interpretation on how agency inspectors will decide whether or not products are classified properly for combustible dust hazards under the new hazard communication standard.

**Voluntary Protection Program (VPP)**
There continues to be much discussion about the VPP. After several years of supporters of the program defending the program to OSHA, the Administration and Congress (succeeding in maintaining funding for the program) the program has now come under some fire from the Department of Labor Office of Inspector General.

A report issued in December finds that more than 10 percent of VPP employers had injury and illness rates above industry averages or have been cited for violations. Bottom line on the report – the Inspector General recommends OSHA improve its oversight of the VPP and re-evaluate its policy of allowing worksites with high injury and illness rates to remain in the program.

**Future Concern for OSHA?**
A recent decision by the Supreme Court justices may have future repercussions for OSHA. The justices in a conference decided to turn down review of a case of “OSHA preemption of local safety codes, thereby upholding a lower court ruling.

The case goes back a few years to when there were several crane accidents in New York City. The City of New York then implemented regulations that were much stricter
than those set by OSHA. Several in industry filed a lawsuit against the City stating that City regulations could not preempt federal regulations. The lower court ruled that the City had the right to impose stricter regulations.

**NIOSH**

**NIOSH Draft Carcinogen Policy**
NIOSH is seeking comments (due February 13) on its draft carcinogen bulletin that updates the policy for classifying chemical carcinogens. The Institute hopes to evaluate whether or not the proposed carcinogen policies are consistent with the current scientific knowledge of toxicology, risk assessment, industrial hygiene and occupational cancer.

**Nanotechnology Strategy**
NIOSH published (December 26) the latest strategic plan for nanotechnology research. The first strategic plan on this issue was issued in 2005 and the latest plan will guide the Institute through 2016. NIOSH states that much has been learned since 2005 and there is more knowledge of the risks to workers. The latest plan focuses on identifying new hazards, clarifying initial hazard findings, developing updated guidance, conduct a study of workers exposed and assessing whether the guidance is being followed. (There isn’t any doubt that NIOSH is, and remains, the lead on the issue of nanotechnology and its potential hazards.)

**And Finally**
Most of the State Legislatures have started their 2014 legislative sessions with introduction of numerous bills. AIHA government affairs has been kept plenty busy scanning these bills (approximately 250 per day) for any issues that might impact the profession occupational safety and health. Look for a summary in the next issue.

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