



## *Happenings On The Hill*

### **American Industrial Hygiene Association Government Affairs Department**

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### **President Proposes Budget Increase for OSHA and MSHA – Decrease for NIOSH**

President Obama has proposed the Fiscal Year 2017 federal budget and it includes some good news for OSHA and MSHA while not so good news for NIOSH. But remember, the President's proposed budget is only a "request" and there is no way this budget will make it into law.

As a matter of fact this is only the beginning of the entire process. The House Republicans have already put out a "blueprint" of their budget proposal that would drastically cut federal spending although no specific details have emerged. Then we will see the Senate proposal followed by numerous hearings on the Hill before they get down to the real business.

Will they adopt a budget? Odds are less than 50-50 as Congress seems to have fallen into this cycle of not approving a "real" budget, but simply adopting an omnibus bill as time runs out. I expect the same thing to occur this year. What makes this even more frustrating is that Congress adopted a two-year spending level last year so this scenario of omnibus bills could be avoided. So much for that idea! And don't forget there is still the looming threat of sequestration cuts. The fun times continue!

Let's take a look at the President's budget proposal, even if it is only wishful thinking:

## **OSHA**

Existing Budget for FY16	\$552.8 million
President's FY17 Proposal	\$592.1 million

<u>Some Specifics:</u>	<u>FY16</u>	<u>FY17</u>
Federal Enforcement	\$208 million	\$226 million
State Program Enforcement	\$100.9 million	\$104 million
Whistleblower Enforcement	\$17.5 million	\$22 million
Fed. Compliance Assistance	\$68.4	\$73 million
State Consultations Grants	\$57.8 million	\$60 million
Training Grants	\$10.5 million	\$11 million
Safety & Health Standards	\$20 million	\$23 million
Safety & Health Stats	\$34.3 million	\$40 million

The OSHA budget proposal also highlighted the fact that the agency hopes to issue two final standards in FY17 (beryllium and respirator fit test), three notices of proposed rulemaking and 21 guidance documents.

Voluntary Protection Program – Good news on this front. For the first time ever the budget proposal contains a specific set-aside, \$3.5 million, for this program. Nice to see the agency recognizes the worth of this program.

Flashback – In 2007 OSHA received \$487 million. By 2012 the agency was receiving \$565 million. Since 2012 the agency has seen a reduction of \$12 million; and the number of employees at the agency (2173) is exactly the same as it was in 2007. Interesting for sure!

One other note – Why is this budget in trouble. Let me cite the words of the House Chairman of the Appropriations Subcommittee overseeing spending for OSHA, MSHA and NIOSH – “My advice would be don’t make plans to spent the money yet.” That says it all!

## **MSHA**

Existing Budget for FY16	\$375.9 million
President's FY17 Proposal	\$394.9 million

## **NIOSH**

Here’s where AIHA and many others get heartburn. For at least the fifth consecutive year the President has proposed a cut in the NIOSH budget. Nearly this entire cut is a result of zeroing out the appropriations for the Education Research Centers and the Agriculture, Forestry, Fishing Program. AIHA and others have already started efforts to retain this funding by sending letters to the Hill and will be requesting individuals to contact their elected officials to support retention of this funding.

Existing Budget for FY16	\$339.1 million
President's FY17 Proposal	\$283 million

## **OSHA Announces Final Silica Rule**

It really did happen! On March 24, OSHA announced the final rule on occupational exposure to respirable crystalline silica. To take you back, OSHA first attempted to

update the silica standard in 1974 after NIOSH recommended that OSHA cut the exposure limit in half. The current round of rulemaking began in 1997 and the George W. Bush administration declared it a priority in 2002. The Obama administration moved it to the top of the agenda in 2009. Then it was stalled at the White House Office of Management and Budget for two and a half years and now we have a final rule!!

So, what is all the fuss about? Well, the final rule cuts the current exposure limit in half for general industry and about 20 percent for construction and shipyards. The rule comprises two standards, one for construction and one for general industry and maritime. Both take effect on June 23, 2016. The construction portion will have one year to comply with most requirements. General industry and maritime will have two years. Employers in fracturing will also have two years to comply with all provisions except engineering controls which have a five year effective date.

Read it for yourself. Here is the link to the OSHA silica web page and the final rule <https://www.osha.gov/silica/index.html>

Is this now the end of the debate on silica? Far from it! Industry has already stated it will challenge the final rule in court. Congress has two different approaches to get involved, albeit only one is really a viable approach.

- The first is the use of the Congressional Review Act to override the final rule. Problem with this is that even if Congress overrides the final rule the President is likely to veto the effort.
- The more likely approach is that Congress will attempt to incorporate a budget rider on the OSHA budget that will ban OSHA from spending any dollars on the silica final rule, including enforcement. In the last budget cycle the House placed such a rider on OSHA but the rider was removed when the final omnibus bill was introduced and enacted. I expect Congress to try this approach again.

## **Other OSHA Activity**

### **Beryllium**

OSHA held a public hearing on March 21 and 22 to discuss the agency's proposed beryllium rule. The OSHA proposal has been years in the making and would address exposure limits that were set some 45 years ago. The new proposed exposure limit would lower the limit by roughly 90 percent and was reached by an agreement between those involved with beryllium from both industry and labor.

The hearings didn't result in any final agreement as there were those who believe the limit should be even lower and those who believe the lower limit would create hardship for many businesses that work with beryllium.

What will happen? Hard to say at this point in time. While OSHA hopes to finalize this rule before the Obama administration ends in January, it should be noted that the President's 2017 budget proposal lists this rule as a priority in fiscal year 2017. This would allow for only a few months to finalize the rule since the fiscal year starts on October 1. However, OSHA has publicly stated it has no timetable for issuing a final rule. My guess is that there just may not be enough time to finalize the rule before the

end of the year, especially in light of the administration and others concerned about issuing rules and regulations at the “midnight hour”.

One final note: The proposed beryllium rule is a clear example of the broken regulatory process. OSHA has been attempting to update this standard since it held public hearings on beryllium in 1975. OSHA began its current beryllium rulemaking in November 2002. The agreement (negotiated rulemaking) that led to the current proposal took two and a half years before an agreement was reached and proposed to OSHA.

### **Safety and Health Program Management Guidelines**

June is the date set for completing the latest version of the voluntary Safety and Health Program Management Guidelines. This version updates the 1989 Guidelines and OSHA hopes that employers of all sizes will use the guidelines to create their own safety and health programs.

### **Guidance on Data Evaluation for Weight of Evidence Determination**

The comment period on the chemical hazard Weight of Evidence Determination has been extended to May 2 from the original date of March 21. The guidance would help employers classify chemical hazards and determine what must be disclosed on the label and safety data sheet.

### **Eye and Face Protection**

OSHA has published a final rule that updates requirements for personal protective equipment for workers in general industry, shipyards, longshoring, marine terminals and construction. The rule updates references to OSHA’s Eye and Face Protection Standards and becomes effective April 25. See final rule at <https://www.federalregister.gov/articles/2016/03/25/2016-06359/updating-osh-standards-based-on-national-consensus-standards-eye-and-face-protection>

### **EPA-OSHA Prosecution Update**

Back in December it was announced that OSHA and EPA would join forces to crack down on safety and environmental crimes. The point was that the Department of Justice (DOJ) would have better luck in enforcing workplace violations under federal environmental laws that provide for a more severe penalty. After only a few months the DOJ has announced the program is working very well and that the Department is pursuing several civil cases that involve worker safety.

## **Congressional Activity**

Time is running short if Congress expects to enact any meaningful legislation before the end of the year. When one takes into consideration the annual summer recess and the expected adjournment in early fall because of the election, legislative days are limited. Plus, expect much of the remaining time to be taken up in arguments over whether or not the Senate should take up the President’s nomination to the Supreme Court.

### **Safe Patient Handling**

As a follow-up to introduction of legislation that would require OSHA to enact a safe patient handling standard, AIHA has submitted letters of support for the legislation. You

can read AIHA letters within the AIHA member site at <https://www.aiha.org/government-affairs/FederalActivity/HR4266-Safe%20Patient-Support-03-23-16.pdf>

### **“Midnight” Rules Bill**

Republicans in Congress continue to debate legislation that would bar federal agencies from proposing or finalize any regulation with \$100 million or more in annual estimated costs during the final months of a presidency.

This issue has been around for quite some time and every administration faces the same threat. Most of the time the administrations avoid finalizing these “midnight” rules but every once in a while something comes up. One of the most talked about was the ergonomics standard that was finalized during the last few days of the Clinton administration. While the bill would impact both Republican and Democrat administrations, it is obviously targeted at the Obama administration; however the current administration had already warned agencies that they needed to finalize any regulation by mid-summer in order to avoid this problem.

**Interesting Bill.** HR 4768 has been introduced that would restore the principle that courts are to decide questions of law rather than agencies. The premise behind the bill is that only the courts should interpret the statutes and that the agencies have no right to do so. Proponents of the bill cite “regulatory overreach” while opponents claim the agencies have the expertise to interpret. Of course, part of the problem is that Congress makes the laws vague so as not to have to make hard choices. Don’t think this will pass in this session of Congress but the bill does have bi-partisan support.

### **TSCA Reform**

Still no word on whether or not the Senate and the House can work out a compromise on the Toxic Substances Control Act legislation. Two separate bills have been passed but they need to decide on one measure if anything is to be accomplished. Both the House and the Senate are stating they still hope to enact legislation this year; however time is running out.

## **NIOSH Activity**

A couple of quick items from NIOSH –

- NIOSH plans to issue a final new recommended exposure limit for diacetyl yet this year. NIOSH began looking into a new limit about 4 years ago and has led the effort to address this issue. Many had hoped OSHA would push some sort of regulatory action but it was left to NIOSH to move forward.
- NIOSH has also updated a NIOSH criteria document on heat stress. The document was last issued in 1986 and includes the latest research into the issue, including physiological changes that result from heat stress, the impact of drugs on heat stress and information on personal protective equipment that can be used to control heat stress.

## **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 on the “stay connected” tab at the top of the page. Once in government affairs, click on “Federal Legislation Action Center”. 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.

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