



## *Happenings On The Hill*

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

*Aaron K. Trippler, Director*  
703-846-0730 [atrippler@AIHA.org](mailto:atrippler@AIHA.org)

---

**July 13, 2015**

#### **No End in Sight on Budget**

The battle of the budget is in full swing in Washington as Congress winds down its summer work and prepares for the summer recess the month of August. I don't expect to see a federal budget adopted any time soon. Frankly, odds are better than 50-50 that there will be no agreement on an actual budget, a threat of another government shutdown, and then a last minute Continuing Resolution adopted to continue funding the government.

So where's the problem? It is likely the debate that will take place over "sequestration". Remember that? The law that requires the government to cut around \$100 billion a year in spending each year for ten years. Congress changed the law for a couple of years to spare those cuts but sequestration is rearing its ugly head again this year. The fight centers around the fact that Congress wants to override sequestration so far as defense spending is concerned while leaving other cuts in place. The President has vowed to veto any such attempt and says Congress either cuts everyone as required or no one.

That folks is called a stalemate!

But how does all of this impact occupational safety and health? Well, OSHA, MSHA and NIOSH aren't exactly budget areas to fight over, but taking a look at the different views on these budgets is worth a few minutes. Here's where we stand:

## **OSHA**

Existing Budget:	\$552.8 million
President's Proposal:	\$592.1 million (\$40 million increase)
Senate Proposal:	\$524.5 million (5.2% cut from existing budget)
House Proposal	\$535 million (3.2% cut from existing budget)

### Notable issues:

The House proposal would cut federal enforcement by \$15 million, cut all funds for the Harwood Training Grants, delay the silica rule until the agency can demonstrate the effectiveness of equipment intended to measure silica exposure and show that methods for reducing silica exposure can be completely cost effective.

The Senate proposal would block moving forward with the silica rulemaking until new outside reviews are conducted.

## **NIOSH**

Existing Budget:	\$334.9 million
President's Proposal:	\$283 million
Senate Proposal:	\$316 million (5.7% cut from existing budget)
House Proposal	\$341 million (1.8% increase over existing budget)

### Notable issues:

The President proposes to cut all funding to the ERC and AFF programs

The Senate proposes to fund the ERC program but cut funds to the AFF program

The House proposes to continue funding for both the ERC and AFF programs

## **MSHA**

Existing Budget:	\$375.9 million
President's Proposal:	\$394.9 million (\$20 million increase)
Senate Proposal:	\$357 million (5% cut from existing budget)
House Proposal	\$371 million (1.3% cut from existing budget)

Bottom Line – Don't expect to see any budgets for occupational safety and health decided any time soon. Besides, none of the proposals cited here have even made it to the floor of either the Senate or the House. Frankly, I expect to see the OSHA, MSHA and NIOSH budgets end up about where they are today. Sure seems like a lot of work to make few changes!

## **New Issues in Congress**

Several measures have been introduced in Congress the last few weeks that would have an impact on occupational safety and health. While odds are slim that any of these issues make their way into law it is worth taking a look at the mood of Congress on OH&S:

**Voluntary Protection Program (H.R.2500).** This bill would codify the Voluntary Protection Program (VPP), meaning the program would become a permanent program within OSHA, including a provision for separate funding. This is the fourth time the bill has been introduced in Congress. Previous versions were never seriously considered

and I don't expect this one to be either. However, the purpose of the bill is to let OSHA know that this program is a success and the agency should not do anything to tinker with the program. AIHA will be submitting a letter of support for this legislation in the next week. Note: If you recall, Virginia enacted similar legislation to become the first state to do so on the state level.

**Regulatory Reform.** This continues to be a hot issue on the Hill. In addition to the more than a dozen bills previously introduced regarding regulatory reform, no end is in sight. A Resolution has been introduced to establish a permanent joint select committee that would be charged with measuring the feasibility of all rules forecast to cost the economy at least \$50 million. The panel would also hold hearings on the effects of regulations.

Another regulatory idea floating around is to create a "regulatory budget" that would limit federal agencies' rulemaking abilities. This would hold federal agencies accountable for the rules they issue by tracking the financial burdens the rules place on the economy. The estimated cost of each rule would be added up and capped at a certain amount.

A similar measure would encourage agencies to minimize the cost of regulations and improve transparency. Sounds reasonable to me and not sure why a law would be needed? This should be done anyhow. Ah, the ways of Congress!

**TSCA Reform.** Reforming the Toxic Substances Control Act (House version HR 2576) is on its way to reality, I think! The House passed the bill and has sent it to the Senate where there is support for making reforms to this Act. The bill would make it easier for EPA to request new safety data on chemicals and regulate chemicals already on the market. This latest version (after numerous attempts in previous sessions of Congress) doesn't try to be "all things for all people", the main reason it has a chance of making it through the legislative process.

**Safe patient handling.** Expected to be introduced shortly is a bill that would require OSHA to enact a safe-patient handling standard to protect health care workers from musculoskeletal injuries.

**Federal Contracts.** Lots of debate over an Executive Order that requires the federal government to consider labor law violations committed within the past three years when making contracting decisions. This would include violations of OSHA regulations. On the surface, a great idea, but as with anything the devil is in the details.

**Accommodations for Pregnant Workers.** Finally, there is a bill introduced (S 1512) that would require employers to provide reasonable accommodations to pregnant workers similar to those provided to employees with disabilities. This issue has been a "hot button" issue in many states, forcing the federal government to finally take a look.

## **OSHA Activity**

**Silica.** Still waiting to see what the agency might do with the proposed silica rule. With Republicans in Congress mounting an all-out attack on the proposal it will be interesting to see what the agency has in store for the rule.

**Beryllium.** Finally, after 10 months languishing at the White House Office of Information and Regulatory Affairs, the OSHA proposal to lower the exposure level to beryllium has been sent back to the agency. There aren't any details on what the White House said to OSHA, but the road is now clear for the agency to move forward with the proposal and open it up for public comment. OSHA still hopes to complete this rulemaking during the Obama administration, but time is running out.

**Combustible Dust.** While rulemaking is likely out of the question, OSHA has issued an enforcement memorandum regarding the issue. According to OSHA, the memo was issued to "help compliance safety and health officers determine whether dust accumulation in a facility should be cited in violation of OSHA standards". Industry has voiced concern over this memo not only because of several requirements within the memo but because it seems as if OSHA is using the memo in place of notice and comment rulemaking.

**Injury and Illness Prevention Program (I2P2).** Yes, the issue is still making news at the agency, albeit not as a regulatory proposal. Dr. Michaels recently announced that while the agency will not resume work on the issue, he hopes to soon release guidance on the programs used by employers.

**Ergonomics.** No, the agency has not addressed the issue of ergonomics through rulemaking but it has increased the number of ergonomics citations it issues under the general duty clause. And a new federal enforcement policy from OSHA gives workplace safety inspectors additional clarity on citing health-care facilities for safe-patient handling issues under the general duty clause.

**Confined Spaces Rule.** Don't forget, the confined spaces in construction rule takes effect in August, with full enforcement to take effect October 2. On July 9, the agency issued temporary enforcement policy for the standard. But hold the phone – there is an ongoing challenge in a federal appeals court; but I expect the rule to take effect as scheduled.

## **NIOSH**

Word is that NIOSH hopes to issue a recommended exposure limit for diacetyl later this year.

NIOSH is also in the process of developing a system for occupational exposure banding. This would help address the continued concern of outdated permissible exposure limits (PELs). While OSHA is in the process of accepting comments on ways to improve control of chemical exposure in the workplace, exposure banding seems to near the top of the list of solutions. And boy is it needed! Experts state there are as many as 100,000 chemicals in commerce, but fewer than 2,000 exposure limits worldwide.

**NIOSH Nanotechnology Study.** A recent study to determine risk to workers working with nanotechnology materials found a bit of good news. Although this was a limited study results found exposures to carbon materials were below the recommended limit.

Finally, another piece of good news regarding workplace safety and health. The state of Oklahoma recently enacted legislation that would require school districts throughout

Oklahoma to provide training on workplace safety and health to students in grades 7 through 12. NIOSH has partnered with the OK State Department of Education to make this information available. Let's hope this program is expanded across the United States!

## **The Way I See It!!**

After rereading this issue, I had this feeling that FINALLY, it looks as if Congress, OSHA, etc. are moving forward with issues that impact occupational safety and health. Then I read between the lines and realized that the "more things change, the more they stay the same".

What gives me pause to realize that much of the activity will not result in action was a recent story I read about workplace health and safety protections. The story, written by Jamie Smith Hopkins and published by the Center for Public Integrity, focused on protecting workers, but asked the question of "Who's to blame for the deaths, injuries and illnesses each year and why can't we protect these workers"?

While there is plenty of blame to go around, the statistics on regulatory activity was startling. "In the last 20 years OSHA has issued seven health standards, one of which was revoked by Congress, compared six in 1978 alone."

I also found the story very interesting when discussing the outdated PELs. Ms. Hopkins stated that "when OSHA attempted to update 376 chemicals in 1989 and won praise from big industry groups, it was several trade groups that ultimately filed suit to overturn some of the new limits. And that the AFL-CIO filed suit, too, but to get OSHA to toughen some of the rules, not toss them."

So, what does this tell us? Well, what it says is that early everyone is to blame for the regulatory gridlock. However, it also says that everyone has a say in the process which is as it should be.

I say "nearly everyone" because no matter what, the professionals in occupational safety and health continue to protect workers day in and day out no matter what happens in Congress or at OSHA.

## **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.

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