



Happenings On The Hill

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Note: Congress took a little time off over the summer, so did “Happenings”. Both are now back.

The Good News and the Bad News from the Hill

With Congress debating the budget, concern with international events, health care, 2016 Presidential politics, and the visit from Pope Francis, it's a wonder anything gets done. Frankly, little does. But here's a look at some of the activity of importance:

The Good News:

- Just hours prior to the end of the fiscal year on September 30, Congress enacted and the President signed a short-term spending bill (Continuing Resolution CR) that would extend funding to the federal government through December 11. This simply means that everyone gets to spend the same thing they are now spending, at least until December 12. This is actually good news on some fronts. It means that OSHA and NIOSH funding stayed the same with no cuts in sight. Of course, this is only until December 11 when the CR would expire.
- That's it – that's all the good news from the Hill.

The Bad News (a little more of this):

- Notwithstanding the fact that a CR was enacted to keep the government operating until December 11, the bad news is that prior to this the debate starts all over again. And – the President has stated he will not sign another short-term

funding bill; warning Congress that it must adopt a full budget and address the issue of sequestration. Therein lies the problem – The Republicans want to increase defense spending and keep sequestration cuts for all other spending. The Democrats and the President want to increase spending for both defense and other areas or provide no increase for anything. The debate is just starting.

- In addition to the whole idea of adopting a final budget, we must watch the debate carefully to determine what might happen to OSHA and NIOSH spending. While OSHA funding will likely be somewhat flat, there is concern about what types of “riders” Congress may impose in a final budget. As an example, one of the first budget discussions involved a rider that would place restrictions on OSHA finalizing a silica standard. And NIOSH isn’t safe either. The President has recommended cutting all funding for the Education Research Centers from the NIOSH budget.
- Prior to November 5 Congress needs to address the debt limit or the government will face a catastrophic default on the nation’s debt. The date is a bit earlier than was originally thought, yet the government has been playing with the numbers since this past March when the borrowing cap was reached. Simply put, we need to raise the \$18.1 trillion dollar debt limit. Makes individual credit card bills look pretty reasonable!
- Infighting within the Republican Party. Everyone is aware that Speaker John Boehner is resigning from Congress on October 30 and a new Speaker must be elected. What was thought to be a formality has now turned into a two-way race. Doesn’t make any difference who is running; what you need to know is it shows a split within the party. There is a small, but powerful, group of House Republicans who are battling the Leadership over several issues, most notably the issue of funding for Planned Parenthood. Because of this debate the election for a new Speaker could become a knockdown, drag out fight.
- The House Committee with OSHA oversight (Education and Workforce Committee) will see a change in leadership after next year’s election no matter which party has control. Chairman John Kline has announced he will not be seeking re-election; however during the remainder of his tenure he stated it is his intent to step up OSHA oversight. Good or bad? Depends on your viewpoint of this Committee and OSHA oversight.

NIOSH Remaining in Good Hands

Dr. John Howard has been reappointed to a third six-year term to head up the National Institute for Occupational Safety and Health. With this reappointment, Dr. Howard becomes the longest serving head of the Institute. Everyone involved in occupational safety and health should be pleased with this reappointment. Dr. Howard has been instrumental in improving the cooperation between OSHA and NIOSH and providing research into many areas that have improved worker safety and health.

OSHA Activity

Confined Spaces in Construction. OSHA has issued a guidance document to help small business comply with the new Confined Spaces in Construction Standard. Print copies of the document are not available, but the OSHA website has posted the publication. For more information, see OSHA's Confined Spaces in Construction Web page which includes links to the standard, FAQs, and fact sheets.

Inspections. OSHA has announced a move to a new enforcement weighting system that assigns greater value to complex inspections that require more time and resources. Dr. Michaels stated that not all inspections are equal and the new system will allow OSHA to better focus resources on more meaningful inspections. This new system will be used to measure how many inspections are conducted annually. The change will encourage inspectors and their supervisors to take on complicated inspections because they won't have to worry about whether they are meeting goals for individual inspections. Should be interesting to see how this works.

Hazard Communication. OSHA has published a revised Hazard Communication directive. The directive is available on the OSHA hazard communication page at <http://www.osha.gov/dsg/hazcom/index.html>

OSHA Violations in Fiscal '15. OSHA has announced the top 10 categories of most-cited alleged violations of the OSH Act in fiscal 2015. The top ten are – Fall Protection, Hazard Communication, Scaffolding, Respiratory Protection, Lockout/Tagout, Powered Industrial Trucks, Ladders, Electrical-Wiring Methods, Machine Guarding, and Electrical-General Requirements.

Revised Recordkeeping Rule. Following the court-ordered ban on issuing citations for recordkeeping violations that are more than six months old, OSHA released a notice of proposed rulemaking in late July. The proposed rule would revise regulations that an employer's ongoing obligation to accurately record workplace injuries and illnesses continues for five years after a report should be made. OSHA has now announced that it is extending the deadline for submitting comments on this proposed rule to October 28. OSHA says the proposal adds no new compliance obligations and would not require employers to make records of any injuries or illness for which records are not already required. This proposed rule is in response to the AKM LLC v Secretary of Labor (Volks) decision.

Confined Spaces in Construction Enforcement. If you recall, OSHA set October 2 as the date to begin full enforcement of its confined spaces in construction rule. Several stakeholders had contacted OSHA to extend this date, but as of today no extension has been announced. In addition, OSHA is defending the rule against several stakeholders who have filed petitions for review with the U.S. Court of Appeals for the Fifth Circuit.

Workplace Violence. OSHA is working on an updated compliance directive to address increasing concern with workplace violence. OSHA hopes to have the new directive available in early 2016.

Beryllium Proposed Rule. Stakeholders are developing comments on the OSHA proposed rule that would cut the permissible exposure limit on beryllium. The proposed rule would also impose measures regarding personal protective equipment, medical

surveillance and training. OSHA has been working on this proposed rule for 13 years and the agency is hopeful the rule will be finalized in the coming months. Comments on the proposed rule are due November 9.

Process Safety Guidance. Nothing seems easy anymore. In June OSHA issued two memos regarding enforcement on its standard for high-hazard chemical processes. OSHA stated the memos were issued in accordance with the Obama administration's multi-agency chemical safety working group. Not so fast says a group of industry representatives. The group has mounted a legal challenge to the memos saying that changes were issued without going through a formal rulemaking procedure.

Other Issues in Congress

One could write numerous pages about the many legislative measures being debated in Congress. However, a shorter answer might be to simply list the various issues now being debated with the understanding that few, if any, of these measures will ever be enacted. What with the debates taking place over the federal budget, planned parenthood, immigration, international events, the infighting taking place within the Republican members of the House – odds are pretty good that these measures won't see any serious consideration any time soon.

- Voluntary Protection Program. Making this program a permanent program within OSHA. AIHA sent a letter of support for this legislation.
- Reestablishing and refunding the Office of Noise Abatement and Control within EPA. AIHA is also sending a letter of support for this legislation.
- Senate committee discussion on demanding that OSHA refrain from using new guidance documents to enforce several aspects of the chemical safety regulations. Debate that OSHA should follow the required administrative procedures for rulemaking. The Committee also challenged OSHA on using guidance documents rather than rulemaking for other issues.
- Legislation that would create a new independent commission to evaluate rules in place at least 10 years and make recommendations for changes or repeal. Some observers say this bill has bi-partisan support and may at least receive serious consideration.
- TSCA Reform. Still considerable interest in legislation that would amend the Toxic Substances Control Act. The bill has passed the House and there may be some interest in the Senate to consider the measure.
- Abatement before citation. This bill would give employers a chance to fix problems identified by compliance officers before issuing a citation and fine. The grace period would only apply to "very minor" regulatory violations.

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 Trippler.