

Happenings on the Hill

A Federal Budget Completed – I Think!

Last month Congress adopted a budget expenditure limit that will run through September of 2017. That seemed to be a public relations coup for Congress, until everyone else realized that a budget was not actually adopted, just a spending limit.

So, since they couldn't agree on an actual fiscal year 2016 federal budget, they passed a spending extension, or continuing resolution, that would allow agencies and departments to continue spending at the existing rate – only until December 11.

By the time December 11 came around they still couldn't agree so they passed an extension of spending until midnight on December 16. Guess what? That date came and they still didn't have a budget but they say they are real close.

House Democrats and Republicans have agreed on a bill but because the new House Speaker pledged to allow everyone three days to read any bill proposed they have put off the vote on this bill until Friday, December 18. And that means ---- they may actually need to once again extend the spending agreement until December 22 to give the Senate enough time to pass the spending bill.

But lo and behold some of the figures in this final budget are starting to leak out. Some good news and some not so good news if things hold up the way they appear right now. Here is what I know as of today.

What will be the final dollar amount for OSHA spending for the year? An increase like the President proposed (plus \$40 million) or a decrease pushed by Republicans? Well right now the figure I have is that OSHA will receive exactly the same amount in 2016 as it did in 2015 - \$552.8 million. Folks, that isn't enough to even keep up with inflation and will not allow OSHA to add personnel to the whistleblower program as planned or pursue other new agenda items.

Will Congress add a policy rider to prohibit OSHA from spending any money on a possible silica standard? The Senate wanted OSHA to start over with the standard-setting process. It looks like the final bill will not have this policy rider in it. But –

There is a policy rider regarding Process Safety Management (PSM). The language says that OSHA shall not enforce or declare to be in effect the July 22 revised enforcement policy for exempting retail facilities from coverage until several conditions are met. One of these conditions is that OSHA shall carry out a public notice and rulemaking process on the issue.

NIOSH received excellent news! The final bill provides NIOSH with a \$4.2 million INCREASE for a total of \$339.1 million. This is one of the few agencies that received an increase in the final bill. And since I

didn't see any language regarding the Education Research Centers I think we can assume funding for the ERCs remains in the budget for another year. The President had proposed cutting this funding.

MSHA received the exact same amount for 2016 as 2015 funding - \$375.9 million, \$19 million less than the President proposed.

Another item of Interest –

Word from the House Appropriations Committee on the final budget deal included the following policy provision: “A directive to stop OSHA’s anti-business end-run around the rulemaking process – requiring public comments and transparency”. Hmmm! Not exactly sure if this will be included in the final deal and not exactly sure what this means; other than this is obviously addressing the issue of OSHA issuing guidelines rather than using the regulatory process. An issue that keeps getting brought up in Congress. Time will tell.

So, as I have been stating for some time now, Congress seems to have little interest in increasing funding for occupational safety and health; a bad omen for the future. Now we wait and see if the budget bill passes as written. Will there be something to cheer about over the holidays or will there only be a lump of coal?

OSHA Releases Semi-Annual Regulatory Agenda

The semi-annual regulatory agenda has been released and we now get a little better look at the issues that OSHA and other agencies are working on or hope to work on in the coming year. The agenda is published twice a year and has really become more of a “wish list” for OSHA and the other agencies; however, it is the closest thing we have to a complete look at the agenda of the agency. Here’s a look at some of the most important issues for the IH and occupational safety and health profession.

Prerule Stage

Bloodborne Pathogens

This is really a hope to review the need for the rule and determine whether or not it overlaps, duplicates, or conflicts with other regulations. The review began back in 2009 and OSHA was supposed to finish the review and issue findings this fall. Obviously this has not yet been completed.

Outlook: I don’t think this review is any kind of priority for the agency. If findings are forthcoming it won’t be for several more months.

Combustible Dust

Rulemaking to develop a combustible dust standard for general industry began with stakeholder meetings in 2009. OSHA now says the agency hopes to begin small business regulatory review of the issue in August, 2016.

Outlook: Hard to believe an important issue like this has lingered so long. And don’t look for anything soon. The administration is unlikely to even hold the small business regulatory review before the election in 2016. In other words, if a standard is ever to be proposed and enacted it is many years down the road.

Chemical Management and Permissible Exposure Limits (PELs)

The big one for AIHA! A closer look at options that might be available to address the issue of outdated PELs. OSHA announced a Request for Information (RFI) in 2014 and the RFI comment period ended in October of this year. The agency hopes to analyze the comments by April of 2016.

Outlook: Would like to say there is a “light at the end of the tunnel” with this issue but I’m afraid that just isn’t the case. The RFI approach by OSHA was a welcome one; unfortunately the solution to the problem is much more complicated than simply seeking out options and recommendations. The good news about the RFI was that we finally have the agency and the federal government engaged on the issue; the bad news is that we are likely years away from any solution.

Process Safety Management

The agency put out an RFI in 2013 to identify issues related to modernizing the Process Safety Management standard. The agency hopes to complete a small business regulatory review by April of 2016.

Outlook: The agency wants to move forward with this issue but time is running out for this administration. While a small business review may take place and be completed, there isn’t enough time to do anything with the result.

Revocation of Obsolete Permissible Exposure Limits (PELs)

From my perspective, the most interesting issue on the entire agenda. The agency says it is initiating a regulatory project to revoke a small number of obsolete PELs. The agency states this is in response to the President’s Executive Order to facilitate the review of existing regulations that might be outdated, ineffective, etc. OSHA hopes to publish an RFI in July of 2016. But there may be more to this than meets the eye. There are many questions and possible concerns about this approach. One of the questions is the concern that if a PEL is revoked the agency might then use the general duty clause to determine if an employer is not providing adequate protection to an employee? Good or bad idea – your call!

Outlook: This issue appeared without many having any idea it would be proposed. I believe there is enough concern that the agency will not be able to move forward with this issue, partly because it can’t be done before the end of this administration.

Proposed Rule Stage

Occupational Exposure to Beryllium

The agency hopes to reduce the exposure level to Beryllium through this proposal. Efforts began way back in 2002 and we are still waiting for the final. The agenda says the agency is now analyzing comments from the comment period that ended last month.

Outlook: While many had hopes that this would be one of the final products forthcoming from the agency during this administration the outlook is not good. While several months ago there were high hopes, the agency has now publicly stated it has no idea on when the next step might be taken. In other words, it is unlikely this will be concluded before the 2016 election.

Final Rule Stage

Occupational Exposure to Crystalline Silica

Beginning way back in 2003, the issue has now reached the final stage and OSHA says it will issue the final standard by February of 2016.

Outlook: If there is one issue this administration will do everything possible to complete this is the one. The outlook is bright that a final standard will be issued. Here's the concern – Will any potential lawsuits stop implementation? I don't think so. Will Congress place a rider on the OSHA budget to deny spending any dollars on the standard? Still waiting to see if such a rider is included in the final budget approach. Republicans had recommended such a rider. Will Congress invoke the Congressional Review Act to stop the standard? There may be an attempt but it is a moot point as the President would likely veto such an effort.

Electronic Reporting of Workplace Injuries and Illnesses

Started back in 2010 and has had several comment period extensions; the agency hopes to issue a final rule in March of next year. This issue has been somewhat controversial, not because of the electronic reporting approach but because of the agency stating it will make the reporting data available on the agency website.

Outlook: An interesting issue. While I believe the agency will do everything possible to finalize this rule, I'm not convinced it will occur before the end of this administration. Much more controversial than many realize.

Long Term Agenda

Not only is it of interest to see what issues the agency lists on the prerule, proposed rule and final rule agendas it is also of great interest to see what the agency lists on the long-term agenda. The only thing one needs to know about the long-term agenda is that this really means these issues are no longer being considered for the foreseeable future. That's a nice way to say that the issues are no longer being considered.

Two issues found their way to this agenda. One is the infectious diseases rule and the other is the injury and illness prevention program (I2P2). Placing I2P2 at this spot on the regulatory agenda is good news for the many opponents of such an approach and bad news for the many supporters. At one time OSHA stated this was the number one priority for the agency.

OSHA to Update Safety and Health Program Management Guidelines

OSHA recently put out a draft update to the voluntary safety and health management guidelines. The guidelines first came out in 1989 and this draft updates several areas to assist employers. According to the agency the draft reflects modern technology and practices and should assist employers in establishing health and safety management plans. One emphasis in the draft is the increased emphasis on employee involvement as well as help company efforts on multi-employer work sites. There is also an emphasis on temporary workers, an issue that was not considered back in 1989.

The draft is out for public comments through February 16. OSHA hopes to publish the final version of the guidelines next summer.

Quick News Notes

In Canada, Ontario health and safety inspectors did an enforcement blitz in July and August targeting hazards at construction sites. Inspectors issued 1,683 safety orders, including 151 requiring work to be stopped.

Remember that Congress included language in the budget spending limit that would raise OSHA fines by up to 82 percent by August of next year? While OSHA says it must wait for guidelines from the White House on how to do this, one sector out there is already discussing the proposal. Lawyers for businesses involved with OSHA issues have stated they expect more business when the fines are raised as more employers are expected to contest fines if the fines are higher. Just what we need, right?

After the new OSHA reporting rule on hospitalizations, amputations and eye losses took effect this past January there were many waiting to see what the outcome of this reporting rule would be. Well, we have our first look. As of October 1, OSHA had received more than 8,500 reports, therefore expecting about 11,500 for the year – much less than the 25,000 OSHA expected. OSHA believes there is underreporting taking place.

OSHA continues its push to get a better handle on protecting whistleblowers. The agency is seeking comments, until January 19, on a draft document intended to help employers develop a program to protect employees from retaliation when they raise concerns about workplace conditions or activities that could harm workers or members of the public.

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.

Have a Safe, Happy and Healthy Holiday Season