



Happenings From The Hill

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August 11, 2011

Consideration of Federal Funding for 2012 Yet to be Debated

Ah yes, the budget! Round and round it goes and no one has any idea when it will stop and what the bottom line will look like. As AIHA monitors this ongoing debate on Capitol Hill, we are especially interested to see what might happen to OSHA and NIOSH. As of today, and things do change daily, there is no word on what might happen. The proposals are all over the place.

OSHA – OSHA receives \$558.6 million for the current budget year, which ends September 30. The President has proposed a 4.4% increase for OSHA in FY12 to a total of \$583.4 million. In mid-July, one Republican Senator prescribed a \$72.6 million cut to OSHA (13%) which would be in line with what House Republicans asked for in April. The Republican proposal would amount to a total of only \$486 million for OSHA, less than what was spent in FY08.

NIOSH – The budget for NIOSH is just as confusing as the one for OSHA. For FY11 NIOSH was provided approximately the same amount it received in FY10. However, the President has proposed to cut the NIOSH budget by 17% in FY12, a \$115 million cut that includes funding for the ERCs and the AFF program. There are numerous Democrats and Republicans opposed to these cuts. The big threat to NIOSH may come from its parent – CDC. If CDC faces huge cuts it may decide to raid some of the NIOSH funds.

What will happen? Hard to tell, but things don't look good for either OSHA or NIOSH. With Congress dedicating itself to cut \$1 trillion in spending at this time and another \$1.4 trillion down the road, everything is on the table. There are those who believe Congress will not cut funding for agencies like OSHA and NIOSH – agencies that protect workers. However, I don't recall any policymaker who won or lost an election based on what happens with OSHA and NIOSH. When push comes to shove, Congress is more likely to protect spending for social security, Medicare and Medicaid than funding for OSHA or NIOSH.

Federal Legislative Activity

Nanotechnology – Rep. Michael Honda (CA) has introduced legislation (HR 2749) addressing the development and stewardship of nanotechnology. The bill would provide grants and funding for precommercial nanomanufacturing research and development, provide a tax credit for investment, and provide for EPA programs for remediation of pollution. A “hot issue” in many ways but at the present time don't look for this bill to receive any serious consideration. Speaking of nano, NIOSH hopes to have guidelines and a recommended exposure limit for nano later this year.

Regulatory Reform – Regulatory reform legislative measures are floating around all over the Congress. Most recently, Sen. Olympia Snowe is urging Republicans to make this a top issue when discussing economic growth and jobs. Sen. Snowe's bill (S 1030) would allow small businesses to challenge proposed regulations rather than waiting until they are finalized. Similar provisions can be found in Senate Bill 474.

There are several other bills addressing this issue. Senate Bill 602 would require agencies to conduct a detailed cost-benefit analysis of all rules before they are submitted to OMB. Senate Bill 299 would require congressional approval for major regulations. Senate Bill 1189 would require a cost-benefit analysis for significant regulations and guidance drafted by federal agencies. House Bill 10 would require Congress to approve regs/rules having impact of more than \$100 million. Previously, Congress had to vote to disapprove a rule or reg, this bill would require prior approval.

Difficult to predict which bill, if any, will receive serious consideration but you can bet that any discussion about the economy and job creation will contain some sort of attempt at regulatory reform.

Voluntary Protection Program (VPP) – No word on when, or if, Congress will take up the bill to codify the Voluntary Protection Program within the OSH Act, but Democrats are watching this bill very closely. Not so much as to their concern for the program as much as they would like to use this bill as a “vehicle” to attach portions of the Protecting America's Worker Act (PAWA). Rep. Lynn Woolsey is the sponsor of the PAWA and would like to see some portion of her bill enacted prior to her announced retirement at the end of 2012. Don't spend a lot of time watching this issue. It is unlikely that either the VPP bill or PAWA will move in this session of Congress. Frankly, a bigger concern might be that Congress decides to go along with an OSHA proposal to have VPP participants fund the program. While this issue was shot down in the last session of Congress, this time around Congress is looking for ways to cut federal spending and making this program self-supporting would save a few million dollars.

OSHA Activity

SHARP Program Rule Change – This change would make it easier for OSHA to inspect SHARP (Safety and Health Achievement Recognition Program) sites. When finalized, OSHA could define sites which would receive inspections, regardless of SHARP exemption status. In other words, OSHA could determine that even while undergoing consultation visits the agency could switch the visit to an inspection. Obviously, the employer community is opposed to this change and labor is in favor. OSHA is in the final stages of drafting and originally hoped to issue the final rule in September. However, the agency has yet to deliver a proposal to the Office of Management and Budget for clearance, a process that takes several weeks. Best guess is that the agency will send OMB a draft rule but it will likely be delayed. As for final enactment, there are some who believe the agency may abandon the issue because of other pending issues.

Changes for Whistleblower Program – It may be a surprise to many, but OSHA has been the agency responsible for enforcing whistleblower protection provisions of 21 statutes, covering not just workplace safety but also the environment, consumer products, the financial system, and other areas. A recent GAO report cited OSHA for several shortcomings in the program and OSHA is now attempting to address some of these shortcomings. One proposed change is to move the whistleblower program from the Directorate of Enforcement to the office of the Assistant Secretary. OSHA is also issuing a new whistleblower investigations manual and will increase training for investigators. Of course with any change comes increased cost. OSHA's 2012 budget request asks for an additional \$6.1 million increase for the program to hire 45 new investigators. This is going to be difficult to receive in these tough budget times.

Injury and Illness Prevention Program (I2P2) – OSHA continues to maintain this is the number one priority for the agency but also acknowledges that it will take several years before any final program is announced. The agency has contacted state plans to seek information about state I2P2 programs and how portions of these programs might be incorporated into any federal rule. However, some of the state plans are expressing concern that a federal rule might require the state plan to change their own rule. OSHA announced that any I2P2 rule will likely be “performance-based”. OSHA also stated that construction will likely be covered by the planned rule, but no word on whether or not construction will have its own I2P2.

Combustible Dust – OSHA has pushed back its rulemaking on this issue and the start of a small business review process in order to gather more information. The small business review is now scheduled to begin in December rather than this past April.

Silica – This proposed rule seems to continually be delayed. OSHA sent the proposed rule to the Office of Management and Budget way back in February and the agency hoped to have a proposed rule published in June. Still no word from OMB as to when the review might be completed.

GHS – The final rule on the Globally Harmonized System is still delayed. OSHA says it looks like September will be the earliest the agency will send the rule to OMB for review.

NIOSH Activity

In addition to work at NIOSH to develop guidelines and a recommended exposure limit for nano later this year, there is other activity:

NORA – NIOSH is conducting a mid-decade review of the National Occupational Research Agenda and is seeking public comments to determine how outcomes can best be maximized. Comments are due August 24.

Diacetyl – NIOSH is holding a meeting to discuss and obtain comments on their draft document “Criteria for a Recommended Standard: Occupational Exposure to Diacetyl and 2,3-pentanedione. The document will be released August 12 and the meeting will take place August 26. OSHA will be paying attention to this meeting and the document as the agency continues its discussion of a possible flavorings rulemaking.

National Biodefense Science Board – If anyone has an interest in this Board, the Secretary of Health and Human Services is accepting nominations to serve on this Board. Deadline for expressing interest is August 19.

Carcinogens and Exposure Limits – NIOSH has announced it will hold a public meeting in November to continue reviewing its carcinogen policies. The institute is also reevaluating its policy on recommended exposure limits to clarify issues. The institute will issue a notice to solicit public comment on the policy.

EPA Activity

The final rule for EPA lead clearance and clearance testing requirements for the renovation, repair and painting program was released on August 5. EPA made several revisions to the 2008 rule that established accreditation, training, certification, and recordkeeping requirements.

Recent AIHA Activity

AIHA recently wrote to Members of Congress in support of the OSHA and NIOSH budgets for FY2012. AIHA expressed concern that the administration has proposed elimination of funding for the Education and Research Centers as well as the Agriculture, Forestry and Fishing Sector Program in the NIOSH budget. As for OSHA, AIHA expressed its support for adequate funding for the agency as Congress considers debt-reduction measures.

AIHA also submitted comments to NIOSH on the draft “Preventing Occupational Respiratory Diseases from Dampness in Office Building, Schools, and Other Nonindustrial Buildings”. AIHA recommends NIOSH conduct a more thorough review of the document to correct minor changes and include more modern references.

The Way I See It!!

If you didn't notice, I skipped a month of putting out “Happenings”. One reason was because there is limited activity on occupational safety and health issues this time of year and this year is no exception. But more so than limited activity on OH&S was the

fact that I, like many, have been mesmerized by the inability of our elected officials to compromise on anything.

Unless you have been living in a cave or under a rock you know what I mean. Let's see – first we have a prolonged debate on what to do about raising the debt-ceiling. After weeks and weeks of debate, the debt-ceiling was raised with a token approach to controlling our spending.

Next we have the inability to extend funding for portions of the Federal Aviation Administration. Let's see – in addition to the argument about a labor issue there was debate on cutting some funding for small airports which would result in a savings of about \$16 million. So what did they do? They denied extension of funding for a few days which amounted to a loss of some \$400 million in revenue for the federal government. That really made sense!

Then we have the downgrading of the U.S. credit rating resulting in the stock market moving in one direction and the direction isn't up!

So what does Congress and the President do? They leave town for vacation. Congress will not be returning until after Labor Day. The President said he will continue with his plans to take two weeks off. All of this after polls show the lowest approval rating for Congress in the history of these polls. The approval rating for the President isn't much better.

I mention all of this because our elected officials continue to worry more about their re-election than in making decisions that might be good for the country. Not sure if the word "compromise" is even in their dictionary.

After working in this field for more than 30 years I thought I had seen everything. But the last month of watching our elected officials on every level (federal, and in some cases State) play politics with the economic future of this country makes one believe the favorable numbers in the polls will continue to go down.

So what does any of this have to do with occupational health and safety? At the present time not a lot. But when Congress returns and begins discussing the FY12 federal budget we need to closely watch the debate. It's a good bet Congress will cut spending – and some of these cuts will undoubtedly impact OSHA, NIOSH, MSHA, EPA and other federal agencies. Let's hope the cuts that are made do not negatively impact the health and safety of workers.

In the end, all of this partisan bickering could make many swear off any involvement in the political process. But just the opposite could also be true. AIHA members – don't sit back and complain. Stand up and write your elected officials and let them know your views on all of the issues. Perhaps, just perhaps, they will listen!

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 left side under access to information. Once in government affairs, click on “Federal Legislation Action Center”. You will need to sign in as this is a members-only section. 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.