



Happenings On The Hill

American Industrial Hygiene Association Government Affairs Department

Aaron K. Trippler, Director
703-846-0730 atrippler@AIHA.org

October 6, 2014

Congress Goes Home to Campaign but Passes Continuing Resolution to Keep Government Running

As expected, Congress adjourned in mid-September to return home and campaign for the mid-term election to take place on November 4. While Congress will be in for what they call a few “pro forma dates” in October, Congress will not really reconvene until November 12. At that time Members will return and finalize any issues yet in limbo prior to adjourning the 113th Session. Finalizing some of these issues will undoubtedly result in considerable debate, however, dependent on whether or not the Republicans win control of the Senate for the 114th Session of Congress in January.

A quick look at some of the issues –

Federal FY15 Budget

Prior to leaving town, Congress passed and President Obama signed a continuing resolution (CR) to keep the government running after the expiration of the FY14 budget on September 30. The CR signed will keep the government afloat until December 11, when Congress must again address the issue. The CR essentially provides government agencies and departments with the same level of funding as was being spent in FY14.

What’s next with the budget? When Congress returns after the November elections they will once again take up the budget. What is expected is that they will pass an omnibus spending bill that will provide funding through the FY15 budget period to end next

September 30. While there will be a few pluses and minuses to individual budgets, we expect the omnibus bill to essentially provide flat funding for agencies and departments.

That could be good news or bad news, depending on how you look at it. The good news is that an omnibus bill would mean that Education Research Center funding within NIOSH would be continued for another year, notwithstanding the President's request to delete this funding. It would also be good news for those concerned that Congress might cut funding for OSHA. One thing to watch closely, however, is whether Congress decides to add "amendment riders" to the appropriations. One area being discussed is that Congress may attach a rider to the OSHA appropriations bill that would bar OSHA from spending any dollars to move forward with the proposed silica standard. One other issue being discussed – there was talk that if the Republicans gain control of the Senate in the upcoming election and retain control of the House that they would come back to town eager to cut spending in the FY15 budget; however, insiders say the Republicans are more likely to simply pass the FY15 omnibus spending bill as is and then come back in January and begin debating cuts in the FY16 budget.

Legislative Results

It doesn't take long to review the occupational safety and health legislative winners and losers in the 113th Session. Nearly every bill introduced that might impact OH&S remained stalled as Congress left town, meaning all of the bills must be reintroduced in the new session of Congress in January. There were some issues introduced and passed in the House but were never considered in the Senate and, vice versa, some issues introduced and passed in the Senate that were never considered in the House.

Near the end of the session, one bill that needs to be remembered was enacted in the House but was not brought up in the Senate. This bill included a compilation of five individual bills and addressed the issue of regulatory reform. Throughout this session of Congress there were a couple of dozen bills introduced addressing regulatory reform. While none were enacted it bears noting that this issue will be front and center in the next session.

The bill that passed the House included language that would allow for judicial review of rules before they are finalized, require agencies to consider less burdensome alternatives to expensive regulations, require up-or-down votes in Congress of any final major rules, and require agencies to post online costs and benefits of proposed rules. The bill was not considered in the Senate but you get an idea of what will be forthcoming in January.

While Members Campaign OSHA Moves Forward

One can continue to criticize the lack of leadership and action in Congress when it comes to occupational safety and health but one can't complain about a lack of movement on issues at OSHA. After what seemed like months of inactivity we are suddenly seeing the agency move forward on numerous issues. This doesn't mean the issues suddenly on the radar will see completion any time soon but it sure opens up the discussion which in turn is good for worker health and safety. Give credit where credit is due. OSHA leadership put enough pressure on the White House to allow some issues to move forward.

Here's a look –

Final Rule on Reporting Severe Injuries

OSHA has announced a final rule that would require employers to notify OSHA when an employee is killed on the job or suffers a work-related hospitalization, amputation or loss of an eye. The rule will go into effect on January 1, 2015 for workplaces under federal OSHA jurisdiction. State plan states are expected to follow suit.

Under the revised rule, employers must notify OSHA of work-related fatalities within eight hours, and work-related in-patient hospitalizations, amputation or loss of an eye within 24 hours. Previously, OSHA's regulations required an employer to report only work-related fatalities and in-patient hospitalizations of three or more employees. Single hospitalizations, amputations or loss of an eye was not required under the previous rule.

The revised rule also provides employers with the opportunity to report incidents electronically, in addition to the phone reporting options. One other change in the revised rule was an update of the list of industries exempt from the reporting requirements. **Outlook** – Some industry concern but expect this final rule to move forward as planned.

Silica

Following the extensive public hearings and comment period, OSHA is presently reviewing the thousands of comments to determine whether the agency should make any changes to its proposed silica rule. Insiders say it may take the agency another six to nine months or longer before the agency gets through all of the material it has gathered on this proposed rule. The proposed rule would reduce the exposure level in general industry and construction as well as lower the proposed action level.

Outlook – Notwithstanding the considerable work ahead (and opposition), don't be surprised to see this move towards becoming a final rule before the end of the Obama administration. The White House has supposedly given OSHA the go-ahead and the agency plans on moving forward.

Infectious Diseases Rule

After numerous delays, the latest word is that OSHA is prepared to move forward with the small business review panel on this proposal. OSHA says the most recent delays were caused because of the need to assure adequate representation of the diversity of the affected health care sectors on the panel. OSHA stated the agency hoped to provide materials for panel review by mid-October. **Outlook** – This is only the start of the process for this rule but hopefully it will move forward.

Beryllium

The OSHA proposed beryllium rule has been sent to the White House for review. Although the public has yet to review the proposed rule, insiders believe the proposal is closely in line with the labor-industry proposal to lower the permissible exposure limit (PEL) to 0.2 micrograms per cubic meter of air and require exposure monitoring.

Of course, White House approval is only the beginning of the process, meaning that once it goes back to OSHA the hearing and public comment period begins. Even though a labor-industry agreement seems to have been made, there are some who believe the

PEL should be even lower and that the proposal should also be expanded to include construction in addition to general industry. **Outlook** – Probably a year or more away but at least it's moving.

Permissible Exposure Limits (PELs) Update

The White House has given OSHA approval to move forward with publication in the Federal Register of a Request for Information (RFI) regarding the issue of updating the PELs. This is a major step forward for AIHA and other stakeholders who have long pushed for this update.

The RFI, when published, will seek out recommendations and options that might be considered in efforts to update the exposure limits for hundreds of chemicals, many of which have exposure limits dating back to 1970.

While this RFI is only a request for information, it is but one of several recent signs that OSHA is serious about updating the PELs. The first sign of interest came when the Federal Advisory Committee on Occupational Safety and Health made a recommendation that OSHA request the White House to issue an Executive Order updating the PELs for federal agencies and departments. This was followed by OSHA publishing a list of annotated tables on the OSHA web site that provided comparisons of various exposure limits. Now, with this RFI, OSHA is taking the next step.

Outlook – All of these efforts combined do not mean we will see the PELs updated any time soon; however it is the first time in years we have an administration take an interest in the effort.

As a follow-up to news about the RFI, AIHA hopes to gather input from AIHA members attending the upcoming fall conference this month. It is hoped that OSHA will also have personnel attending the fall conference where a discussion with attendees can take place.

Electronic Reporting of Workplace Injuries and Illnesses

This OSHA proposed rule is not the same as the recently announced OSHA final rule on reporting severe injuries. This proposed rule is the one that would require employers to collect and record information on certain workplace injuries and illnesses and to report the information to OSHA electronically.

This proposed rule is controversial and OSHA recently reopened the comment period to gather additional information. The new comment period ends October 14. **Outlook** – Don't look for this proposed rule to move forward.

States Continue to Move Forward on Many OH&S Fronts

While nearly all of the state legislatures have adjourned for the year, a look back at some of the most recent legislative measures enacted shows a continued interest in OH&S issues. One can add to that the fact that many states are considering various regulations and rules to address OH&S issues. And don't forget State Plan activity.

Massachusetts – Enacted legislation that would provide health and safety protection for public employees.

Illinois – Repealed a law that provided for voluntary licensing for the industrial hygiene profession.

Arizona – The Arizona State Plan is in a major dispute with federal OSHA over Arizona’s law for residential construction fall protection. Federal OSHA says the law is not as stringent as federal requirements. Federal OSHA is threatening to take over construction safety enforcement unless Arizona changes the law. Arizona counters that their law is sufficient. Stay tuned.

New York – City of New York has adopted a final rule creating a voluntary master hazard remediation technician registration program.

California –

- New Regulations took effect October 1 to protect health care workers from injuries caused by lifting or moving patients. This safe-patient handling regulation makes California one of about a dozen states with laws and/or regulations addressing this issue. One unique thing about the California regulation is that it ties this regulation to the state injury and illness prevention program.
- Following up on what federal OSHA has done regarding temporary workers, California has a new law to protect temporary workers, considered the toughest temporary worker law in the nation.
- A new law has been signed that would require California workers to fix serious workplace hazards prior to exhausting appeals for violations.

Hawaii – After more than a year, the Hawaii State Plan will again assume control from federal OSHA for general industry inspections. The state turned over these inspections to federal OSHA back in mid-2012 because of a lack of funding at the agency.

NIOSH Activity

NIOSH has also been moving forward on several initiatives.

E-Cigarettes and Tobacco Report

NIOSH recently published a draft version of the “current intelligence bulletin” on tobacco. This most recent draft goes beyond smoking to cover smokeless tobacco and electronic cigarettes. AIHA’s e-cigarette project team drafted comments and the AIHA board approved submission of these comments on the draft NIOSH bulletin. Our comments can be found at <https://www.aiha.org/government-affairs/PublicPolicy/NIOSH-Comments-Workplace%20Tobacco-09-15-14.pdf>

Emergency Preparedness Web page

NIOSH recently introduced its new Emergency Preparedness and Response Directory web page. The web page offers improved access to NIOSH topics and publications pertaining to responder safety and health, natural disasters and hazards, and NIOSH disaster response efforts. Visit the NIOSH web site to view. As an addendum to this news – OSHA says it is taking a look at an emergency response and preparedness rule. Would like to see this move forward.

National Occupational Injury Research Symposium

NIOSH will hold the sixth National Occupational Injury Research Symposium on May 19 to 21, 2015 in West Virginia. This is the only national forum focused on the presentation of occupational injury research findings, data, and methods.

Temporary Worker Practices

NIOSH teamed with OSHA to issue the recent “recommended practices” document on temporary worker safety and health. Great to see OSHA and NIOSH team up on this project, hopefully one of many in the future.

CANADA

Not to be outdone, but our neighbor to the north is to finalize its new workplace hazard communication standard on December 1. This is Canada’s response to the GHS and will align Canada’s existing hazard communication system with the U.S. and other countries. Canada did set some deadlines for implementation, with full implementation expected by June, 2017.

As a little update on how the GHS is working in the U.S., OSHA reports that the hazard communication standard accounted for about 15 percent of the inspections yielding citations for the first nine months of this year. Insufficient worker training was the top reason for citations.

Also in Canada, the government of British Columbia responded to a pair of dust-related sawmill explosions by reviewing and making changes to their regulations. Started the review in April and made the changes effective in September. Hmmm! Makes one wonder how they can address the issue of combustible dust so quickly and we in the U.S. can’t seem to even agree whether or not we should do anything.

The Way I See It!!

So, who do you believe?

Two recent articles I received.

The first – “Federal Rules Cost U.S. Economy \$2 Trillion Per Year”. This article went on and on about how federal regulations cause a loss in economic growth every year, with small business hit harder than anyone else, averaging \$11,724 per worker just to comply with regulations. And the article said \$970 of this is for OSHA and homeland security rules.

The article concluded that this data demonstrates the need for Congress to become more involved in regulatory policy.

The second – “Office of Management and Budget Estimates Major Rules Net Benefits”. This article said that major rules issued by all federal agencies between 2003 and 2013 yielded between \$217 billion and \$863 billion in annual benefits. The article said during this time OSHA issued four major rules which yielded \$900 million to \$3.6 billion in annual benefits.

Conclusion – We are all right, depending on whom we are talking too! And that explains how Washington works!!

Finally, we are less than a month away until the mid-term elections. No need to go into what I think or anyone else thinks about what might or might not happen. It really makes little difference. The Republicans will likely hold the House of Representatives and have a very good shot at taking control of the Senate. But even if they don't win the Senate we will still have gridlock for the next two years – and perhaps longer. That's it in a nutshell! But please vote and then you can complain!

And so it goes!

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