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HAPPENINGS FROM THE HILL

American Industrial Hygiene Association Government Affairs Department

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President Proposes Fiscal '09 Budget – But Don't Carve It In Stone!

No, this is not the same "Happenings" as last month when I reported on the '08 budget approved by Congress and the President. This month, we are looking at the '09 proposed budget. That's right - we start all over again.

President Bush proposed his '09 budget this week, his last budget proposal as President. But to quote at least one Member of Congress who took a look at the budget "this budget is dead on arrival!" Overall, the budget increases defense spending and reduces discretionary spending. And of course there are winners and losers.

While I would agree that the odds of this budget being adopted are low, the odds of adopting any budget before the next President takes office are probably just as low. The budget is supposed to take effect on October 1, but prior to that look for multiple budget hearings and a slew of continuing resolutions until sometime in early 2009.

Hearings have already begun, but Congress is not exactly in a hurry on this one. Besides, this being a Presidential election year, the number of days for Congress to be in session will be limited.

Notwithstanding these odds, it is still worthwhile to take a look at the proposal. Earlier this week I forwarded a quick look at the figures to many AIHA members and other interested parties. For those who haven't already seen the figures, here they are:

Occupational Safety and Health Administration

Proposed FY 2009 Budget (Dollars in Millions)

	FY 2008	FY2009	Change
Safety and Health Standards	\$16.6	\$17.2	\$0.6
Federal Enforcement	182.7	194.0	11.3
State Programs	89.5	91.1	1.6
Technical Support	21.7	22.6	0.9
Federal Compliance Assistance	71.4	76.6	5.2
State Consultation Grants	52.4	54.6	2.2
Training Grants	9.4	0.0	(9.4)
Safety and Health Statistics	31.5	34.1	2.6
Executive Direction and Administration	10.8	11.5	0.7
Total, OSHA Budget Authority	\$486.0	\$501.7	\$15.7
Full-time Equivalents	2,118	2,165	47

However, the figures above don't tell the whole story. Here's a closer look at some of the details of the OSHA proposal.

- Note that the budget once again shows a complete reduction in the Susan Harwood Training Grants. President Bush has attempted to remove these grants each year, but Congress has restored the funding. When this budget is finally approved, look for these funds to be restored.
- If you recall, Congress included language in the '08 budget that requires OSHA to report to Congress every ninety days of progress on several standards. The agency is proposing to eliminate the reporting requirements for these standards and instead report on the progress of its rulemaking and guidance work through the semiannual regulatory agenda.
- OSHA states it plans to issue four final rules in 2009 – standards improvement project phase III, confined spaces in construction, vertical tandem lifts, and electric transmission subpart V.
- OSHA also hopes to issue proposed rules on beryllium, the globally harmonized system (GHS), walking/working surfaces, and power presses.

Mine Safety and Health Administration

Over at MSHA, the story is another example of just how confusing Washington can make things. Let me see if I can explain this in as few words as possible. When the final '08 MSHA budget was approved, the figure was approximately \$340 million appropriated for MSHA. But remember that little law Congress enacted that reduced everyone's budget by 1.74%. That meant the final figure for MSHA was approximately \$334 million. That's what we have believed all along and was a nice increase over the 2007 budget.

Now we have the President proposing \$332 million for the '09 fiscal year. If my math serves me correctly, that looks like a reduction of around \$2 million for MSHA. But hold on – according to

the acting Assistant Secretary of Labor for MSHA, the President's proposal increases the budget by some \$19 million above the FY 2008 request. I'm not going to research this one. The only thing I can figure out is that the proposal is above the President's request for 2008, but below the figure that was actually approved. Doesn't make much difference – I know for a fact the proposal is for \$332 million and will stick with that.

National Institute for Occupational Safety and Health

If you think the MSHA budget is confusing, you ought to try and figure out the NIOSH budget. One news article stated that NIOSH would be taking a \$100 million hit, with \$83 million of this coming from the World Trade Center Monitoring and Treatment Program. This article also cited a decrease of \$10 million in the National Occupational Research Agenda, as well as several other reductions in the education and research centers, mining research, and personal protective technology.

I would like to think these figures are wrong but tend to believe they are correct. If so, we have a lot of work ahead of us to protect the NIOSH budget.

By the way, the actual line item for NIOSH in the budget proposal, without the above categories, shows a \$30 million increase. I'm sure that's a little misleading after one throws in all of the others categories. We'll see!

Who's In Charge at MSHA?

An update on MSHA leadership – another interesting way Washington does things. If you recall, President Bush nominated Richard Stickler back in 2005 to head up the agency. The nomination was returned by the Senate. The President renominated Stickler in 2006 and the nomination was returned by the Senate. The President renominated Stickler again and the Senate again returned the nomination. Finally, the President used his authority and appointed Stickler during a Senate recess when the Senate had no way to reject the appointment. Stickler served in this capacity until the end of the last session of Congress (the end of 2007).

According to the law, Stickler can not be named as a recess appointment a second time. What to do? The President used his authority to designate Stickler as acting assistant secretary of labor for mine safety and health. That's where we are today!

A little more news on the MSHA front. MSHA has so many requirements for standards and regulations under legislation enacted by Congress in the past year that they are having great difficulty in getting these proposals drafted. So, their sister agency OSHA decided to help them out by "loaning" OSHA standards writers to help MSHA catch up. Both agencies are a little reluctant to provide many details on this joint effort. But it did provide interesting comments from some lawmakers who state that it often takes OSHA over a decade to issue a rule now. What will this "loaning of personnel" mean to the OSHA process? The only thing coming out of the Dept. of Labor is that this is only a temporary situation.

Regulatory Activity

- Cranes and Derricks Proposed Rule. OSHA stated in the semiannual regulatory agenda they hoped to issue a proposed rule in January 2008. OSHA has now announced that

because of the complexity of the issue, the rule would not be forthcoming in 2008 and could not predict when the rule would be issued.

- **Confined Spaces in Construction.** The OSHA semiannual regulatory agenda listed this in the proposed rule stage and OSHA did announce the notice this past November. The comment period was to have ended in January but it has now been extended to the end of February. AIHA submitted extensive comments on this proposed rule.
- **Methylene Chloride.** The regulatory agenda listed this in the prerule stage with comments and a review to be completed by June of 2008. The agency has now extended the comment period until March of this year.
- **Silica.** OSHA hoped to have the peer review on the issue completed by this past January and listed it in the prerule stage. The agency has now placed the issue in a National Emphasis Program. This program provides guidance and evaluation procedures, outreach programs and other information. Silica was one of the issues included in the 2007 appropriations bill that requires the agency to provide Congress with a timeline for action on the issue.
- **Hexavalent Chromium.** The agency posted a compliance directive on this in late January. The directive established inspection and compliance procedures. The agency also stated that employers with workers exposed above the permissible exposure limit, but protected with a respiratory protection program will not be cited until May of 2010. Employers should contact OSHA if they have specific questions on this directive.
- **Reminder on Posting of Injuries and Illnesses.** The agency also announced that beginning February 1; employers must post a summary of the total number of job-related injuries and illnesses that occurred last year. Again, employers should check with OSHA for details on this requirement.
- **Tuberculosis Respirator Fit-Testing.** Appropriations language prohibiting OSHA from enforcing the TB respirator fit-testing was removed from this year's appropriations bill after three straight years of the ban. While OSHA and many stakeholders succeeded in having this ban removed, we will keep a close eye on the '09 appropriations bill to make sure it is again not included. The reason for caution is that the past sponsor of this prohibition has been Rep. Roger Wicker of Mississippi. Rep. Wicker has now been appointed to fill the Senate seat vacated by Senator Trent Lott of Mississippi who has now retired. No word on whether Senator Wicker will try another prohibition from his Senate position.

State Activity

Most states are active on the legislative front as the new year begins. That means a considerable number of legislative measures introduced around the country that impact the IH profession and occupational health and safety. A quick look at some of these issues:

Professional Recognition/Title Protection. AIHA succeeded in having legislation introduced in Hawaii to recognize and protect the IH, safety and health physics titles. Remains to be seen if we can succeed in the effort this year, but we are working on it.

Meth Lab Remediation. AIHA is monitoring nine separate measures in eight different states.

AIHA remains supportive of language that only individuals with adequate education and experience be authorized to inspect suspected meth labs for remediation and clean-up.

Mold. AIHA is monitoring fifteen separate measures in nine different states. Again, AIHA is concerned about the qualifications necessary for mold analyses.

Ergonomics. Few states have introduced what I would call a true “ergonomics” measure. But there are nine states with fifteen separate measures addressing the issue through various means. Most of these measures pertain to “safe-patient handling”. Look for this to increase in the year ahead. And speaking of ergonomics, Michigan is again showing increased activity on the ergo front. A Michigan rulemaking panel has voted in favor of a state ergonomics rule. The draft ergo rule will now be sent to a state agency for further action. Obviously, there is considerable support and opposition for the rule and it remains to be seen if it continues to move forward.

City of New York. And finally, the City of New York has been active in its lawmaking capacity. The City has been reviewing a bill that would require considerable new hurdles for those monitoring exposure hazards. The bill was introduced in December and, with substantial opposition to the measure, was placed on hold. The bill has been revised and will probably return since it has the support of the Mayor and the NYPD. AIHA opposed the legislation during testimony in December and since then has written letters of opposition to the Mayor and all members of the City Council.

And so it goes!

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. The center can be found within the members-only section of the AIHA web page. 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.