

OSHA

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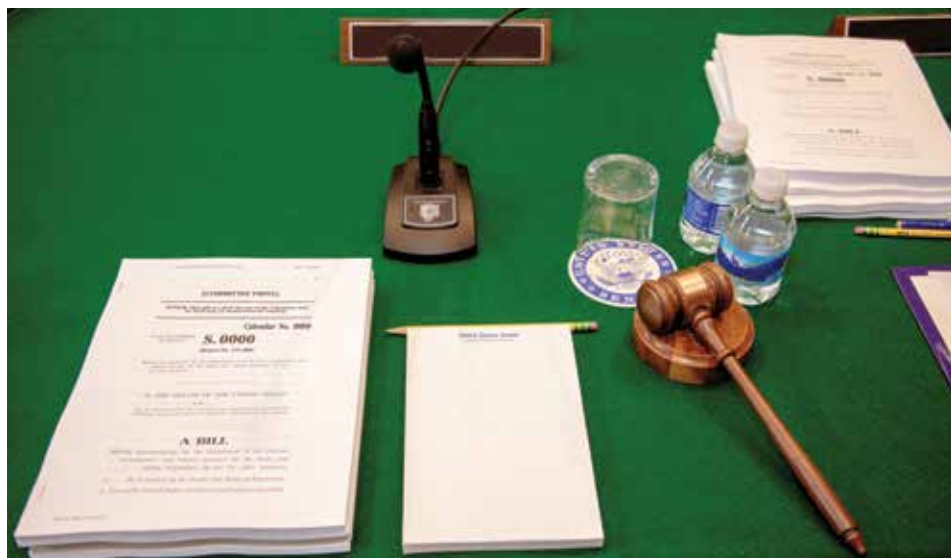
OSHA's budget increase official after President Trump signs 'minibus' spending package

OSHA's \$5 million budget increase became official Sept. 28 after President Donald Trump signed a "minibus" appropriations bill that includes funding for the Department of Defense and a continuing resolution to keep the government open until Dec. 7.

The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act of 2019 and the Continuing Appropriations Act of 2019 was passed by the Senate on Sept. 18 and by the House on Sept. 26 after the chambers' differences were resolved in a conference committee Sept. 13.

The appropriations bill provides about \$557.8 million for OSHA in fiscal year 2019, a \$1 million increase from the Senate's initial minibus bill (which passed Aug. 23) and \$12.5 million more than the House's proposed budget. The agency received \$552.8 million in FY 2018; the Trump administration allocated \$549 million. It's the first time since 1996 that Department of Labor appropriations are in place before Oct. 1, the start of the federal government's fiscal year.

"This legislation will provide our national defense," House Appropriations Committee Chair Rodney Frelinghuysen



(R-NJ) said in a Sept. 28 press release. "It also ensures continued investments in the health, safety, educational and economic well-being of our nation."

The conference committee chose to allocate no more than \$102.4 million to

OSHA State Plans, an increase of \$1.5 million. It's the first hike since FY 2014, according to a post from the agency's former Deputy Assistant Secretary Jordan Barab on his "Confined Space" blog.

— article continues on p. 4

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OSHA updates National Emphasis Program on trenching and excavation safety

In response to a recent increase in trench-related worker deaths, OSHA has updated its National Emphasis Program on trenching and excavation safety, effective Oct. 1.

According to OSHA, 23 construction workers were killed in trench collapses in 2016, surpassing the combined total from 2014 and 2015.

The updated NEP:

- Provides a national reporting system for all OSHA trenching and excavation inspections by updating guidance for

recording them in the agency's internal data management system.

- Requires OSHA area offices and regions to develop and implement outreach programs supporting the NEP. Programs "should include providing compliance assistance material to excavation employers, permitting and other municipal organizations, industry associations, equipment rental organizations, water works supply companies, and major/local plumbing companies."

OSHA will provide education and prevention outreach during the first 90 days of the program, and will respond to trench-related complaints, referrals, hospitalizations and fatalities.

Enforcement activities will commence once the outreach program expires, with the agency expecting OSHA State Plans to match the effectiveness of the procedures outlined in the updated NEP.

Information on the NEP is available at sb-m.ag/2P6wKWE.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to osha.gov/dcsp/alliances/index.html.

American Staffing Association

Date of alliance: Oct. 21, 2016

OSHA and ASA are committed to providing ASA members and others with information, guidance and access to training resources that will help them protect the health and safety of workers and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act.

Through the alliance, the organizations will continue to protect the health and safety of temporary workers, particularly by reducing and preventing exposure to safety and health hazards during temporary job assignments. This renewal agreement provides a framework and objectives for the alliance's activities. Alliance participants will summarize specific activities and time frames for completion in a written work plan.

Through the alliance, the organizations will use relevant injury, illness and hazard exposure data when appropriate to help identify areas of emphasis for alliance awareness, outreach and



communication activities. The alliance also will explore and implement selected options to evaluate the effectiveness of the alliance and measure the impact of its overall effort on improving workplace safety for employers and workers.

In renewing this alliance, OSHA and ASA recognize that OSHA's State Plan and On-site Consultation Project partners are an integral part of the OSHA national effort, and that information about the products and activities of the alliance may be shared with these partners for the advancement of common goals. The alliance goals and the objectives include:

Raising awareness of OSHA's rule-making and enforcement initiatives:

- To share information on occupational safety and health laws and standards, including the rights and responsibilities of workers and employers.

- To share information on OSHA's National Emphasis Programs, regulatory agenda and opportunities to participate in the rulemaking process.

Outreach and communication:

- To develop information on the recognition and prevention of workplace hazards, and to develop ways of communicating such information to staffing firms, host employers and temporary workers.
- To speak, exhibit or appear at OSHA's or ASA's conferences, local meetings, or other events.
- To share information among OSHA personnel and industry safety and health professionals regarding ASA best practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum) developed by the participants.

Excerpted from osha.gov/dcsp/alliances/asa_staffing/asa_staffing.html.

In Other News...

OSHA announces REP on ammonium nitrate, anhydrous ammonia hazards

OSHA has launched a Regional Emphasis Program addressing hazards stemming from exposure to fertilizer-grade ammonium nitrate and agricultural anhydrous ammonia.

Employees in the fertilizer storage, mixing/blending, and distribution industries face fire and explosion risks, along with exposure to hazardous chemicals and toxic gases.

The REP, which started Oct. 1, is effective in Arkansas, Kansas, Louisiana, Missouri, Nebraska, Oklahoma and Texas. The first 90 days of the program will be education and prevention outreach by OSHA to promote compliance with existing standards. Enforcement will begin at the conclusion of the 90 days and continue until Sept. 30, 2019, unless the program is extended.

OSHA seeking nominations for construction advisory committee

OSHA is accepting nominations for its Advisory Committee on Construction Safety and Health, the agency announced in a notice published in the Sept. 17 *Federal Register*.

ACCSH advises the assistant secretary of labor on construction standards and policy matters. Members are appointed by the secretary of labor and serve staggered two-year terms. Five members represent construction employers and five represent construction employees. The other third comprises two members from state safety and health agencies; two public members, “qualified by knowledge and experience to make a useful contribution to the work of ACCSH;” and one representative selected by the secretary of health and human services.

ACCSH nominations are due Nov. 16.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Clarification on the use of a cold therapy-only setting on a therapeutic device is first aid

Standard: 1904.7(b)(5)(ii)

Date of response: Aug. 9, 2018

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. Specifically, you ask whether the use of a cold therapy-only setting on a therapeutic device is considered first aid for purposes of OSHA recordkeeping. In your letter, you state that your company has developed a care system device that has a dual modality, offering a separate cold therapy and compression therapy functionality. We understand that when treating an injury, cold water flows from a device through a hose onto one side of a wrap, and that air flows from the device through a hose to the other side of the wrap. The cold and compression components are operated independently and the user can experience the benefits of active cold therapy with “pressure off” selected. You also state that the “pressure off” setting does not affect the functionality of the cold therapy delivered through the wrap.

Section 1904.7(b)(5)(ii) of OSHA’s recordkeeping regulation requires employers to record work-related injuries and illnesses that result in medical treatment beyond first aid. Under Part 1904, medical treatment does not include “first aid” as defined in paragraph 1904.7(b)(5)(ii). The section specifically states that “using hot or cold therapy” is first aid. See subparagraph (E). Section 1904.7(b)(5)(iii) goes on to state that the list of first aid treatments in section 1904.7(b)(5)(ii) is a comprehensive list of first aid treatments. Any treatment not included on the list is not considered first aid for OSHA recordkeeping purposes.

In determining whether the use of the cold therapy-only setting on your device constitutes first aid or medical treatment under the recordkeeping regulation, OSHA’s Directorate of Technical Support and Emergency Management consulted with the OSHA Office of Occupational Medicine and Nursing (OOMN). A review of the literature description on your care system was discussed and analyzed.

After completing the review, OSHA has determined that applying only the cold therapy component of your device (with no compression) is first aid for injury and illness recordkeeping purposes. As noted above, section 1904.7(b)(5)(ii)(E) states that the use of cold therapy to treat a work-related injury or illness is first aid. However, please note that the use of air compression therapy is not included on the list of first aid treatments in section 1904.7(b)(5)(ii). Accordingly, when the air compression component of your device is used, either with or without cold therapy, to treat a work-related injury or illness, the case must be recorded on the OSHA 300 log.

Amanda L. Edens, Director

Directorate of Technical Support and Emergency Management

Excerpted from

[osha.gov/laws-regs/standardinterpretations/2018-08-09](https://www.osha.gov/laws-regs/standardinterpretations/2018-08-09).

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The Susan Harwood Training Grants Program will remain viable for another fiscal year, receiving around \$10.5 million. The administration's previous attempts to cut that program have failed, and the House slated it for elimination in its budget proposal.

OSHA's federal compliance assistance efforts will see a \$2.5 million increase to \$73.5 million, with at least \$3.5 million going to the Voluntary Protection Programs. OSHA's enforcement budget gets a \$1 million boost, to \$209 million.

The Mine Safety and Health Administration will receive level funding at \$373.8 million, with up to \$2 million going to mine rescue and recovery and at least \$10.5 million to state assistance grants. The House initially proposed \$367.6 million for the agency, and the Trump administration allocated \$375.9 million.

The bill includes a provision that some of the state assistance grants "may be used for the purchase and maintenance of new equipment" as required by the agency's coal dust rule for mine operators who "demonstrate financial need." That rule lowered the exposure limit at underground and surface mines to 1.5 milligrams per cubic meter of air from 2.0 milligrams. Other changes include sampling requirements with continuous personal dust monitors.

NIOSH will receive \$336.3 million – a \$1.1 million increase from FY 2018 – and remain under the Centers for Disease Control and Prevention. The Trump administration proposed to give the agency \$200 million and move it to the National Institutes of Health. The House budgeted \$339.2 million for NIOSH.

To read the final bill, go to congress.gov/bill/115th-congress/house-bill/6157/actions.

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