

OSHA

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‘Laws matter’: Acosta seeks budget increase for DOL enforcement activity

While President Donald Trump seeks another sizable cut to the Department of Labor’s budget, Secretary of Labor R. Alexander Acosta is attempting to boost enforcement funding for certain agencies, including OSHA.

“Laws matter,” Acosta said during an April 12 hearing convened by the Senate Appropriations Committee’s Labor, Health and Human Services, Education, and Related Agencies Subcommittee. “They have been passed by Congress. They are the laws of the land, and they need to be enforced.

The men and women at the Department of Labor need the resources to enforce them.”

President Trump has proposed a \$1.1 billion cut to DOL for fiscal year 2019, allocating \$10.9 billion. The administration had allocated \$9.7 billion for DOL in FY 2018 – a \$2.4 billion cut – but the omnibus funding bill passed on March 23 allotted the department about \$12.2 billion.

OSHA is in line to receive \$549 million for FY 2019, a slight drop from \$552.8 million in FY 2018. Acosta, meanwhile, has proposed a \$6.1 million increase for



the agency for federal enforcement and an additional 42 full-time equivalent employees to replenish compliance safety and health officer positions.

During the hearing, he voiced his support for data-gathering efforts required by OSHA’s Improve Tracking of Workplace Injuries and Illnesses final rule, but said he has concerns about privacy.

“We are looking at methods where we can obtain this data while at the same time respecting the privacy of individuals,” Acosta said in response to a question

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Have OSHA advisory committees been disbanded? Coalition asks Acosta to fill vacancies

A coalition of 42 organizations has sent a letter to Secretary of Labor R. Alexander Acosta expressing its concern regarding “recent reports that the Department of Labor is stalling, disbanding and allowing the lapse of several critical federal advisory committees” at OSHA.

The letter, dated April 24, calls for Acosta to fill vacancies on the:

- National Advisory Committee on Occupational Safety and Health
- Advisory Committee on Construction Safety and Health
- Maritime Advisory Committee for Occupational Safety and Health
- Whistleblower Protection Advisory Committee
- Federal Advisory Council on Occupational Safety and Health

The coalition also is requesting that Acosta recharter WPAC and FACOSH. Its final appeal is for DOL to select members for the Advisory Board on Toxic Substances and Worker Health “with balanced representation from the scientific, medical and claimant communities.”

In its fiscal year 2019 budget request, OSHA states that WPAC is “being replaced with more targeted stakeholder meetings,” and that FACOSH was not renewed by Executive Order 13811, issued Sept. 29. The agency says FACOSH costs \$173,831 to operate and an estimated \$140,000 will be saved by not renewing WPAC.

The *Santa Fe New Mexican*, in partnership with the ProPublica Local Reporting Network, published a report March 29 stating that none of the committees has

met for at least nine months and four of the five have not met for more than a year. WPAC’s last meeting was April 26, 2016, the newspaper claims.

“It is critical that these advisory boards be given the opportunity to meet and make recommendations as well as help implement science-based safeguards so that everyone can benefit from a safer workplace,” the coalition’s letter concludes.

Among the organizations that signed the letter are the AFL-CIO, BlueGreen Alliance, the Center for Progressive Reform, the National Coalition for Occupational Safety and Health, Public Citizen, United Steelworkers, and the Union of Concerned Scientists.

Read the letter at sb-m.ag/2FFox6f.

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.

The Joint Commission/Joint Commission Resources

Date of alliance: Aug. 21, 2013

Through the OSHA and TJC/JCR Alliance, the organizations will provide TJC/JCR members and others with information, guidance and access to training resources that will help them protect the health and safety of workers. In particular, the alliance will continue to address reducing and preventing exposure to physical, chemical, biological and airborne hazards in health care and addressing emergency preparedness issues. The alliance’s goals 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 through the publication of three Environment of Care News articles per year.

- To convene or participate in forums, roundtable discussions or stakeholder meetings on health care worker safety-related issues to help forge innovative solutions in the workplace.

Outreach and communication:

- To develop information on the prevention of workplace hazards, and to develop ways of communicating such information (e.g., print and electronic media, electronic assistance tools, and OSHA’s

and TJC’s/JCR’s websites) to employers and workers in the health care industry.

- To share information among OSHA personnel and industry safety and health professionals regarding TJC/JCR best practices or effective approaches and publicize results through outreach by TJC/JCR through OSHA or TJC/JCR developed materials, training programs, workshops, seminars and lectures (or any other applicable forum) developed by the participants.
- To speak, exhibit or appear at OSHA’s or TJC/JCR conferences, local meetings or other events such as the JCR Annual Emergency Preparedness Conference.

Excerpted from osha.gov/dcsp/alliances/jcabol/jcabo.html.

In Other News...

OSHA to host public meeting on whistleblower issues in trucking, railroad industries

Workers in the trucking and railroad industries filed the most whistleblower complaints in 2017, according to OSHA, prompting the agency to schedule a public meeting on whistleblower issues for industry stakeholders.

In advance of the June 12 meeting, OSHA is seeking input on whistleblower practices and experiences, particularly:

- How can OSHA deliver better whistleblower customer service?
- What kind of assistance can OSHA provide to help explain the whistleblower laws it enforces?

Those interested in attending must register by May 29.

Comments are due June 5. Go to regulations.gov and search "OSHA-2018-0005-0001" for more information.

OSHA enforces whistleblower provisions under 22 statutes. Learn more at whistleblowers.gov/worker_protections.

New flier offers best practices for tractor-trailer drivers

OSHA and the trucking industry have partnered on a flier intended to raise awareness of the three most common hazards tractor-trailer drivers face after reaching their destinations.

The flier provides tips for parking, backing up, and coupling and uncoupling vehicles.

According to the Bureau of Labor Statistics, 13 of the 96 truck transportation fatalities in Midwestern states from 2015 to 2017 occurred during coupling/uncoupling activities.

Download the flier at osha.gov/Publications/OSHA3944.pdf.

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.

Evaluation of chemical exposures in shipyard operations by competent persons

Standard: 1915.3(c), 1915.4(o) and 1915.7

Date of response: April 18, 2016

Question: *If a chemical exposure in a shipyard operation does not have a PEL established by OSHA, but the chemical's measured concentration exceeds a Threshold Limit Value recommended by the American Conference of Governmental Industrial Hygienists or other recommended occupational exposure limit, may a competent person determine protective measures?*

Reply: Yes. As specified in the OSHA standards for shipyard employment, Part 1915, the employer's competent person may specify the necessary protection for employee exposure to hazardous substances. The definition of the competent person is provided by sections 29 CFR 1915.3 and 29 CFR 1915.4:

1915.3(c): The responsibilities placed upon the competent person herein shall be deemed to be the responsibilities of the employer.

1915.4(o): The term "competent person" for purposes of this part means a person who is capable of recognizing and evaluating employee exposure to hazardous substances or to other unsafe conditions and is capable of specifying the necessary protection and precautions to be taken to ensure the safety of employees as required by the particular regulation under the condition to which it applies. For the purposes of Subparts B, C, and D of this part, except for 1915.35(b)(8) and 1915.36(a)(5), to which the above definition applies, the competent person must also meet the additional requirements of 1915.7.

As indicated in the definition above, for the purposes of Part 1915 shipyard operations covered by Subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, Subpart C, Surface Preparation and Preservation, and Subpart D, Welding, Cutting and Heating, the competent person must also meet the additional requirements of 29 CFR 1915.7. Further, OSHA refers you to the specific operational requirements for employers in Subpart H, Tools and Related Equipment, Subpart P, Fire Protection in Shipyard Employment, and Subpart Z, Toxic and Hazardous Substances, involving competent persons and hazardous atmospheres.

In situations where there is not a PEL in an OSHA standard for a certain chemical exposure, and the exposure presents a serious hazard to a shipyard worker, or in situations where a chemical exposure presents a serious hazard at a level below an OSHA PEL, the employer must still ensure the competent person "is capable of recognizing and evaluating employee exposure to hazardous substances or to other unsafe conditions and is capable of specifying the necessary protection and precautions to be taken to ensure the safety of employees." 29 CFR 1915.4(o). Such a determination is predicated on the presence of a "serious hazard" and not necessarily based on an exposure measurement exceeding an OEL.

Sincerely,

Thomas Galassi, Director

Directorate of Enforcement Programs

Excerpted from osha.gov/laws-regs/standardinterpretations/2016-04-18.

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Publisher

Suzanne Powills, suzanne.powills@nsc.org

Editor

Melissa J. Ruminski, melissa.ruminski@nsc.org

Managing Editor

Jennifer Yario, jennifer.yario@nsc.org

Copy Editor

Paul Wleklinski, paul.wleklinski@nsc.org

Assistant Editor

Tracy Haas Depa, tracy.haas@nsc.org

Associate Editors

Joe Bush, joe.bush@nsc.org
Kevin Druley, kevin.druley@nsc.org
Alan Ferguson, alan.ferguson@nsc.org

Senior Graphic Designer

Michael Sharkey

Online Content Manager

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Joy Tan-Pipilas

Subscriptions/Circulation

subscriptions@nsc.org

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from Sen. Tammy Baldwin (D-WI). “We are looking at methods where we can obtain the data en masse without individual identifying information because once we receive the data, it can eventually become subject to disclosure.”

Sen. Joe Manchin (D-WV) expressed his concern about “rollbacks of safety measures” by the Mine Safety and Health Administration, pointing out that 10 of the 19 coal miners who died in 2017 were from his state. Manchin also called attention to air quality standards. “If we change the standards of air quality, I can guarantee you the black lung disease will continue to increase,” he said. “This is one way we had to fight that and try to stop that.”

Acosta reiterated that although a retrospective study for the respirable coal dust rule was listed on the fall 2017 regulatory agenda, that work was required by

the 2014 regulation. MSHA administrator David Zatezalo cited the same reason during a Feb. 6 House Workforce Protections Subcommittee hearing.

Following up on Manchin’s questions, Sen. Shelley Moore Capito (R-WV) asked Acosta if MSHA has any programs of special emphasis to help curb miner fatalities. The secretary said many are based on motor vehicle safety. In February, Zatezalo said powered haulage was a point of emphasis for MSHA this year.

Acosta said MSHA is focusing on “new rules or approaches that we can put into place to address some of those. In part, we have new miners that haven’t been underground before, so we need to be extra vigilant and extra careful in their education around safety issues. But it maybe that we need to look at some rules and warning signs around those vehicles.”

Watch the April 12 hearing at [sb-m.ag/2HiZMm2](https://www.youtube.com/watch?v=ag/2HiZMm2).

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