

OSHA

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CSB, Harwood Grants back on the chopping block in Trump's FY 2019 budget proposal

The Chemical Safety Board and OSHA's Susan Harwood Training Grant Program once again are slated for elimination in President Donald Trump's fiscal year 2019 budget proposal.

OSHA and the Mine Safety and Health Administration, meanwhile, are in line for staffing increases and relatively stable budgets. At the Department of Health and Human Services, NIOSH is facing significant cuts, along with a shift to the National Institutes of Health from its current status as part of the Centers for Disease Control and Prevention. That move is detailed in the Major Savings and Reform section of "Efficient, Effective, Accountable: An American Budget," released Feb. 12.

Congress has the final say on the budget, and the makeup of that body could change after the midterm elections in early FY 2019, which begins Oct. 1. Additionally, the House Appropriation Committee will have a new chair, as Rep. Rodney Frelinghuysen (R-NJ) is among the incumbents not seeking re-election.

The House, which allocated \$11 million for CSB in FY 2018, passed all 12 of



its appropriations bills Sept. 14, but the Senate has not followed suit. The federal government is operating on its fifth continuing resolution in FY 2018, with the current one set to expire March 23.

CSB touted its value in its budget justification, also released Feb. 12, and asked for \$12.1 million for FY 2019. "The resources developed by the CSB

will be used nationwide to prevent the loss of life, injuries and damage to surrounding communities that result from these preventable chemical incidents," the agency states in its budget justification.

The Trump administration wants to allocate \$9 million for the independent agency to wind down operations. The budget proposal states that CSB is targeted for elimination because of

the "relative duplicative nature of [the agency's] work, and the administration's focus on streamlining functions across the federal government."

The Susan Harwood Training Grant Program, celebrating its 40th anniversary this year, had FY 2018 backing from the Senate but not the House. In its budget

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Public Citizen files lawsuit against DOL, OSHA over injury records

Watchdog group Public Citizen has filed a lawsuit against the Department of Labor and OSHA, alleging that the agencies illegally violated OSHA's Improve Tracking of Workplace Injuries and Illnesses final rule by denying requests the watchdog group submitted under the Freedom of Information Act.

According to the complaint, filed on Jan. 19, Public Citizen made separate requests for injury and illness data in October and November, citing research purposes. OSHA denied both requests in November, contending that the records were exempt from FOIA because they would "disclose OSHA's techniques and procedures for law enforcement investigations," a Jan. 22 press release states.



The lawsuit also states that OSHA has acknowledged receipt of an FOIA request filed in December by Public Citizen, but at press time had not taken further action within the 20 working days required by rule.

The Improve Tracking of Workplace Injuries and Illnesses final rule mandates

that establishments with 250 or more workers electronically submit OSHA's Form 300A. OSHA then would publish the information on its website.

"When OSHA issued the final rule in 2016, it said that it would publicly disclose these records to encourage safety," Sean Sherman, attorney for Public Citizen, said in the release. "For OSHA to now

claim that releasing these same records could somehow compromise law enforcement is absurd."

The watchdog group is requesting that the court find OSHA's actions unlawful and order the release of the records.

Go to <http://sh-m.ag/2nNOiuW> to read the lawsuit.

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 www.osha.gov/dcsp/alliances/index.html.

The Board of Certified Safety Professionals (BCSP)

Date of alliance: Feb. 1, 2018

Through the alliance, OSHA and BCSP will work to provide BCSP certification holders and others with information, guidance and access to 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 (OSH Act).

The goals of the alliance include:

- To collaborate on, share and disseminate information on outreach initiatives promoting improved workplace safety and health, such as the Safe + Sound campaign and National Safety Stand-Down to Prevent Falls in Construction.

- To collaborate on, share and disseminate safety and health information such as occupational safety and health laws, standards, guidance resources, safety and health competency standards, and professional development through print and electronic media, OSHA and BCSP websites, and social media, as appropriate.
- To provide BCSP expertise during the development, review and dissemination of guidance documents promoting the advancement of safety and health programs and the role of safety and health practitioners.
- To convene or participate in forums, roundtable discussions or stakeholder

meetings that focus on best practices for occupational safety and health; foundational safety and health concepts and occupational safety and health career paths among youth; innovative workplace safety and health solutions; and input on safety and health issues of mutual interest.

Excerpted from www.osha.gov/dcsp/alliances/bcsp/bcsp-osha_alliance.html.



In Other News...

National Academies call on agencies to create 'smarter' injury surveillance system

NIOSH, OSHA and the Bureau of Labor Statistics should team up to enhance occupational safety and health surveillance programs, a recent report from the National Academies of Sciences, Engineering, and Medicine states.

The report is the result of a yearlong study conducted at the request of the three agencies. It lists 17 specific recommendations for NIOSH to collaborate with OSHA, BLS and states to create "a collaborative system of systems" to "strengthen the ongoing coordination and data sharing across federal agencies, between federal and state agencies, across state agencies (e.g., labor and health), and with employers and workers to result in the maximum possible engagement of all."

The report states that data collection primarily emphasizes health outcomes, with less focus applied to hazard and exposure information. It recommends that the agencies employ advanced analytical technology to strengthen surveillance efforts while organizing education and training efforts.

Read the full report at <http://sh-m.ag/2EpTj7z>.

DOL boosts civil penalty amounts to adjust for inflation

The Department of Labor has raised civil penalty amounts for violations 1 percent, according to a final rule published in the Jan. 2 *Federal Register*.

The maximum penalty will increase to \$12,934 for serious, other than serious, failure to correct and violation of posting requirements OSHA violations. The maximum penalty for "willful" and "serious" violations is \$129,336. Under the Federal Civil Penalties Inflation Adjustment Act, DOL is required to adjust civil penalty levels for inflation by Jan. 15 of each year.

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.

Medical treatment beyond first aid

Standard: 1904 and 1904.7(b)(5)

Date of response: Dec. 21, 2017

In your letter, you state that a cold compression therapy device uses cold therapy, non-rigid wraps and compression to treat an injury. You also state that non-rigid supports assist in the reduction of an individual's physical symptoms through support and protection of an injured muscle without limiting range of motion of the joint or muscle tissues involved. Also, according to your letter, "compression treatment" includes the use of elastic wraps and massage. Compression produces a force that helps decrease swelling within the injured tissues. Section 1904.7(a) of OSHA's recordkeeping regulation requires employers to record work-related injuries and illnesses that result in medical treatment beyond first aid. Section 1904.7(b)(5)(i) states that medical treatment means "the management and care of a patient to combat disease or disorder." Under Part 1904, medical treatment does not include "first aid" as defined in paragraph 1904.7(b)(5)(ii). Section 1904.7(b)(5)(iii) goes on to state that the list of treatments in Section 1904.7(b)(5)(ii) is a comprehensive list of first aid treatments. Any treatment not included on this list is not considered first aid for OSHA recordkeeping purposes.

Several individual components of a cold compression therapy device are included on the list of first aid treatments. For example, the use of cold therapy (1904.7(b)(5)(ii)(E)), non-rigid means of support (such as elastic wraps) (1904.7(b)(5)(ii)(F)), and massage (1904.7(b)(ii)(M)) are considered first aid when treating a work-related injury or illness. However, please note that Section 1904.7(b)(5)(ii)(M) states that physical therapy is considered medical treatment and is not considered first aid. Additionally, the agency stated that, in general, first aid can be distinguished from medical treatment as follows:

- First aid usually is administered after the injury or illness occurs and at the location (e.g., workplace) where the injury or illness occurred.
- First aid generally consists of one-time or short-term treatment.
- First aid treatments usually are simple and require little or no technology.
- First aid can be administered by people with little training (beyond first aid training) and even by the injured or ill person.
- First aid usually is administered to keep the condition from worsening, while the injured or ill person is awaiting medical treatment. (See, 66 Federal Register 5915 at 5985).

To determine whether cold compression therapy devices constitute medical treatment or first aid under the definitions in the recordkeeping regulation, OSHA's Directorate of Technical Support and Emergency Management consulted with the OSHA Office of Occupational Medicine and Nursing (OOMN). Based on the definitions in Section 1904.7(b)(5), the factors for distinguishing medical treatment from first aid set forth in the 2001 preamble, and an extensive review of the available literature by the OOMN, OSHA concludes that cold compression therapy devices are medical treatment for purposes of OSHA recordkeeping.

Amanda L. Edens, Director

Directorate of Technical Support and Emergency Management

Excerpted from www.osha.gov/pls/oshaweb/owadisp.

[show_document?p_table=INTERPRETATIONS&p_id=31592](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31592).

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request released Feb. 12, the Department of Labor states its intent to use the roughly \$10.5 million from eliminating the grants “to maximize flexibility and use alternative methods to develop and distribute training materials to reach the broadest possible audience.”

Overall, the Trump administration is seeking \$10.9 billion in discretionary funding for DOL, which currently is operating on a \$12 billion budget.

OSHA's proposed budget is about \$549 million, identical to its current one, with an increase of 71 full-time equivalent workers. DOL is seeking to provide 42 new FTE employees to bolster OSHA's corps of compliance safety and health officers, and 32 FTEs for areas such as compliance assistance, outreach and the Voluntary Protection Programs.

MSHA is slated for a budget increase of about \$4.6 million – to \$375.9 million – and 12 new FTEs.

The Trump administration is proposing to cut \$135 million from NIOSH's \$335 million FY 2017 budget and eliminate its Education and Research Centers. It also would end “direct federal funding to support academic salaries, stipends, and tuition and fee reimbursements for occupational health professionals at universities.”

The budget blueprint states that “some activities conducted by NIOSH could be more effectively conducted by the private sector,” citing ergonomic equipment research as an example.

Read the Trump administration's budget request at www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf.

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