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The Watcher

July 12, 2011 Vol. 12, No. 14

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The Backup Budget

A bizarre ritual is going on in Congress in advance of fiscal year (FY) 2012. Appropriators are doing their job, writing and passing bills setting the year's discretionary spending levels, but their efforts might be wasted. With the budget becoming tightly entwined with the looming debt ceiling deadline, all of the recent appropriations activity is probably for naught.

The Republican-controlled House has so far passed or is debating nine out of the twelve yearly appropriations bills, a fast pace considering the relative inaction that has characterized recent appropriations cycles. What is stunning is how quickly dramatic cuts are speeding through the House. All but one of the nine appropriations bills are below the relevant FY 2011 levels, which were in turn a reduction from the FY 2010 budget numbers.

In formulating these bills, the House Appropriations subcommittees have largely stuck to the so-called "302(b)" allocations set forth earlier in 2011 in the House's budget resolution, authored by House Budget Committee Chairman Paul Ryan (R-WI). The resolution, which creates budget caps for Congress, gained notoriety for its drastic cuts to Medicare, but it included spending cuts across the board.

For the appropriations bills, the Ryan budget essentially calls for a continuation of the previous year's budget cuts. The FY 2011 budget agreement cut base discretionary funding by about $40 billion, from $1.089 trillion to $1.049 trillion (how much the agreement cut actual spending, or outlays, is a whole other discussion). The Ryan budget continues this trend, setting discretionary spending at $1.019 trillion, $30 billion below FY 2011 levels.

So far, the amount of spending approved by House appropriations subcommittees is a bit higher than the corresponding FY 2011 levels ($791.9 billion now versus $788.8 billion in FY 2011), but more cuts are coming. The House has already passed one bill with spending increases and has yet to consider three bills with massive cuts.

The only area to escape cuts is Defense. The Defense appropriations bill is by far the largest of the spending bills, representing about half of total discretionary spending. Despite the rhetoric about cuts being unavoidable, Defense appropriations have been increased by $17 billion – three times larger than FY 2011's increase.

The House has yet to consider the three bills with the largest proposed cuts: State; Transportation and Housing and Urban Development; and Labor, Health and Human Services, and Education. These three bills account for $34.5 billion worth of cuts in the Ryan budget, with State being cut by 18 percent from last year, Labor 12 percent, and Health 14 percent.

The cuts to these bills more than offset the Defense bill increases. The bottom line: Ryan's budget slashes health, labor, and State Department budgets while increasing defense spending.

On the other side of the Hill, the Senate is just beginning its appropriations process, despite not having a budget resolution to guide it (the House doesn't have an actual budget resolution either, since both houses must pass it before the resolution is official; instead, the House just made up its own 302(b) allocations based on the budget resolution that only passed the House). Two weeks ago, the full Senate Appropriations Committee passed its first appropriations bill of the fiscal year, the Military Construction-Veterans Affairs bill. Commonly considered the least controversial of the appropriations bills, both the House and the Senate versions of the Military Construction bill agree on an overall spending level – $617 million below FY 2011 levels, a clear sign of the Senate's endorsement of austerity rhetoric.

At its current rate, Congress could conceivably have two or three appropriations bills completed by the start of the new fiscal year on Oct. 1. While that may not sound impressive, Congress has not approved three appropriations bills on time for seven years.

But all this appropriations activity could be rendered moot by the debt ceiling negotiations. It looks like congressional Republicans have succeeded in forcing the president and Senate Democrats into agreeing to significant budget cuts as part of the debt ceiling negotiations, and any budget agreement that comes from these negotiations is likely to upset the appropriations being made in both houses.

Even the relatively modest budget negotiations led by Vice President Joe Biden had settled on about $1 trillion worth of discretionary cuts over a ten-year period. That would translate into cutting some $100 billion each year, more than three times the budget cuts the House is currently working on (the cuts will be even deeper if reductions in defense spending are not an integral part of the final agreement). Thus, a spending agreement that comes out of the debt negotiations will likely mean that the current appropriations battles in Congress are just the beginning of cutting back the federal budget.

FY 2012 Appropriations Status (in billions)				
Subcommittee	**FY 2010 Enacted**	**FY 2011 Enacted**	**FY 2012 House 302(b)**	**FY 2012 Senate Subcommittee**
Agriculture	$23.3	$19.9	$17.3	N/A
Commerce-Justice-Science	$64.3	$53.3	$50.2	N/A
Defense	$508.1	$513.0	$530.0	N/A
Energy & Water	$33.5	$31.7	$30.6	N/A
Financial Services	$24.2	$22.0	$19.9	N/A
Homeland Security	$42.5	$41.7	$40.6	N/A
Interior & Environment	$32.2	$29.6	$27.4	N/A
Labor-HHS-Education	$163.6	$157.4	$139.2	N/A
Legislative Branch	$4.7	$4.5	$4.3	N/A
Military Construction-VA	$76.6	$73.2	$72.5	$72.5
State-Foreign Operations	$48.8	$48.2	$39.6	N/A
Transportation-HUD	$67.9	$55.4	$47.7	N/A
Total	$1,089.7	$1,049.8	$1,019.4	N/A

Campaign to Cut Waste Uses Recovery Tools to Improve Performance, but Challenges Remain

On June 13, President Obama signed an executive order (E.O.) initiating the "Campaign to Cut Waste." The E.O., titled "Delivering an Efficient, Effective, and Accountable Government," builds on many of the administration's previous reforms while borrowing some of the better tools developed to execute and oversee the American Recovery and Reinvestment Act (Recovery Act). However, its impact may be reduced due to recent budget cuts to a key government transparency fund.

Over the course of the last two and a half years, the Obama administration has presided over a series of good government and anti-fraud, -waste, and -abuse measures. These measures include the Open Government Initiative, which Obama began in 2009, as well as the Improper Payments Act and the Government Performance and Results (GPRA) Modernization Act, both of which passed Congress in 2010.

The president's latest initiative, which is another broad effort to cut waste and streamline the government, builds on previous successful reforms – including the Accountable Government Initiative, which imposes cost-cutting goals on federal agencies – while making use of some of the Recovery Act's more effective oversight tools. The administration tasked Vice President Joe Biden with overseeing the new program.

The most notable aspect of the initiative is the creation of a Government Accountability and Transparency Board (GAT Board). Similar to the Recovery Act's Recovery Accountability and Transparency Board (Recovery Board), the GAT Board will provide "strategic direction" to enhance spending transparency and "advance efforts to detect and remediate fraud, waste, and abuse in Federal programs" throughout the government. Drawing from "agency Inspectors General, agency Chief Financial Officers or Deputy Secretaries, a senior official of OMB" and others, the president will appoint all 11 members of the new board and designate one as chair.

Recovery Board Chairman Earl Devaney has been a vocal advocate for the technologies he put in place during implementation of the Recovery Act to target potential fraud that enjoyed high success rates, and it's likely that the GAT Board will begin applying the lessons from the Recovery Act to the rest of the government. The aspiration is that the Board will apply the Recovery Act's more detailed reporting and disclosure requirements to all of federal spending.

Some observers believe it would be easier to mandate the reforms through legislation and are championing Rep. Darrell Issa's (R-CA) Digital Accountability and Transparency Act (DATA Act). The DATA Act would create a powerful independent board to oversee all federal spending transparency and mandate important reforms, such as instituting ultimate recipient reporting and setting data standards government-wide. However, the DATA Act suffers from some important shortcomings, which include a sunset provision that could eliminate progress on federal spending transparency and would disband the independent board if Congress fails to reauthorize the legislation after seven years.

Under the E.O., although the vice president is tasked with convening periodic meetings with agency heads to review progress toward improving performance and cutting costs, the real work will occur below the cabinet level. The federal government's chief performance officer (CPO) will

work with the president's management council (PMC), a reform group made up of high-ranking administrative officials, to act as a clearinghouse for agency best practices to increase efficiencies and reduce costs.

Chief financial officers (CFO) will also work with the PMC to identify savings, such as the elimination of "the programs and subprograms that have the lowest impact on [each] agency's mission," in line with the president's fiscal year (FY) 2012 budget.

Each agency will designate a senior official as the individual responsible for implementing performance reform efforts. The government will post this information on Performance.gov. However, the Obama administration has yet to make the site publicly available, and congressionally driven cuts to the Electronic Government (E-Gov) Fund threaten to derail the president's effort. In fall 2010, the administration planned to release Performance.gov to the public, rightly championing it as a simple way for people to access basic data on the federal government's performance. The site is up and running and accessible to government employees, but OMB is having problems making the site public.

A tug of war between OMB and federal agencies over the proper amount of disclosure has ensued over the last several months with no solution in sight, but OMB is still promising that it is just a "few weeks" away from the launch of a publicly available performance website. Proposed cuts to the E-Gov Fund could push that release back indefinitely.

Cuts to the E-Gov Fund for FY 2011 have already forced the federal government to temporarily shut down several websites.

Agency Rules Could Undermine CUI Reforms

A proposed Department of Defense (DOD) rule has the open government community concerned that agencies may try to undermine the Obama administration's emerging controlled unclassified information (CUI) system before it is even formally in place.

Background

In November 2010, President Obama signed a new executive order on CUI, reforming the system of safeguarding information that is not classified but is still considered "sensitive." The new system allows agencies to "safeguard" information only where justified by law, regulation, or government-wide policy.

Previously, agencies had established methods for controlling unclassified information on an *ad hoc* basis, without standards or oversight. The result was an opaque and confusing jumble of practices, which stymied public access and inhibited information sharing – even between federal agencies.

Under the executive order, agencies can only use CUI categories that have been approved by the National Archives and Records Administration (NARA) and listed in a public registry. The order gives NARA some authority to amend and combine CUI categories to create consistency across agencies. However, the order also states that NARA cannot reject categories with a solid basis in law, regulation, or government-wide policy.

Open government advocates had hoped that requiring a justification in law, regulation, or government-wide policy would limit the kinds of information that could be categorized as CUI and thus withheld from public scrutiny. However, if agencies adopt regulations that create new loopholes, it is unclear if NARA would have the authority to deny or modify the category. If every agency proposes regulations that create overly broad and vague CUI categories, the chaos of the earlier system would be recreated.

Proposed Rule

On June 29, DOD proposed a rule that would purportedly institute new requirements for defense contractors to safeguard the extremely broad category of "Unclassified DOD Information," consisting of all unclassified information that has not been made public or received approval to be disclosed to the public.

DOD published an advance notice of the proposed rule in March 2010, before the new executive order was issued. Though the executive order dramatically changes the framework for CUI, the proposed DOD rule has not substantially changed.

The proposed DOD rule would establish basic safeguarding responsibilities for any "nonpublic information," that is, any information that has not been publicly released. However, in comments on the advance notice, contractors noted that such an approach is problematic because they would have no way of knowing whether particular information had been cleared for public release.

This uncertainty could easily result in a presumption of control, causing nearly all DOD information to be treated as *de facto* CUI. This would contradict the purpose and spirit of President Obama's freedom of information memorandum, which called on agencies to "adopt a presumption in favor of disclosure."

In addition, the proposed rule would require enhanced safeguarding for certain types of information, including notifying DOD of breaches to systems storing such information. Rather than defining the specific information to be controlled, however, the proposed rule simply refers to internal DOD policies.

This would have the effect of enshrining the previous DOD "sensitive but unclassified information" categories that the executive order was supposed to limit and narrow, instead creating a catch-all category. As internal policies, these categories have never been subject to public comment or regulatory review. The proposed rule does not describe the scope or

definition of these categories, leaving them poorly understood and impossible for the public to comment on in any significant way.

Information subject to enhanced safeguarding includes categories such as the much-maligned "For Official Use Only (FOUO)," which are so vague as to be meaningless. Again, the uncertainty about what information is subject to such controls would likely cause undue restrictions to be placed on government information, far beyond those authorized by law.

Reactions

Open government advocates are concerned that the proposed rule would restrict public access to information, while defense contractors are concerned about the difficulty of complying with the proposed rule. Scott Amey of the Project On Government Oversight called the proposed rule "an effort to restrict access to public information." Patrice McDermott of OpenTheGovernment.org was concerned the rule would "open a floodgate for other agencies" to seek similar loopholes.

The *Federal Times* editorialized against the proposed rule, writing, "The Pentagon's proposal needs to be squared more explicitly with Obama's stated goal of government openness. It needs more clarity on what information deserves more control and what should be presumed open to the public."

Steven Aftergood of the Federation of American Scientists wrote that the proposed rule "establishes secrecy, not openness, as the presumptive status and default mode for most unclassified information," which would have "breathtaking implications."

More on the Horizon?

Although the new CUI system instituted by the executive order will not be functional until at least November, agencies have continued to propose revisions to existing CUI policies and information categories that could restrict rather than open up information.

The FAR Council, which manages the Federal Acquisition Regulation dictating government-wide procurement policy, on July 1 submitted a proposed rule on Basic Safeguarding of Unclassified Government Information Within Contractor Information Systems to the Office of Management and Budget (OMB). The full proposal is not available for public review until OMB approves it, at which point the proposed rule will be published in the *Federal Register* for public comment.

DOD has also announced its intent to further revise its CUI policies. According to the *Unified Agenda* published on July 7, the Defense Contract Audit Agency intends to publish a proposed rule in July revising its FOUO policies.

Open government advocates are waiting to see whether the White House will intervene and direct DOD to withdraw or narrow its proposed rule in order to preserve the intent of the

executive order.

EPA Proposes New Expansions to the Toxics Release Inventory Program

The U.S. Environmental Protection Agency (EPA) recently announced its plans to expand the industry sectors required to report to the Toxics Release Inventory (TRI) program and to require electronic reporting for all TRI data. These steps are part of EPA's ongoing efforts to improve and reinvigorate the TRI program.

TRI was established as a part of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, requiring the EPA to make publicly available the releases and transfers of toxic chemicals above a certain threshold. The database of chemical releases became a flagship example of the impact of public transparency. The regular disclosure of chemical releases generated enormous public pressure for companies to reduce the waste they produce, and as a result, the amount of toxic wastes reported has been dropping for years.

The EPA's recent actions are the latest step in the agency's initiative, announced in 2010, to disclose more chemical information to the public. For instance, last year, the EPA added 16 new chemicals to the list of toxic substances that must be reported to TRI, the first time chemicals had been added since 1999.

The agency's initiative is a welcome break from previous efforts to weaken the TRI program. Under the Bush administration, the EPA weakened the TRI program in 2006 by raising the threshold of chemicals that a facility could release before having to report at all. With the Omnibus Appropriations Act of 2009, Congress and the Obama administration restored the program and reversed the changes.

Environmental and public health organizations welcome EPA's efforts to expand the TRI program. In *An Agenda to Strengthen Our Right to Know*, endorsed by more than 100 organizations and released on May 10, recommendations were made to add new reporting industries to the program and require electronic reporting of TRI data.

Expanding Industry Sectors

For the first time in over a decade, the EPA announced, in the agency's May 2011 Action Initiation List, its plans to consider expanding the industry sectors covered by TRI. The EPA's aim is to "provide comprehensive toxic chemical release and other waste management information to communities."

This rule could add or expand coverage to the following six industry sectors: Iron Ore Mining, Phosphate Mining, Municipal Waste Incineration, Industrial Dry Cleaning, Petroleum Bulk Storage, and Steam-Only Production from Fossil Fuels. In a statement to OMB Watch, EPA explained that "though still in the early stages of the action development process, this action is

aimed at broadening communities' right to know, advancing transparency, and generally furthering the purposes of EPCRA section 313." The agency expects to release a proposed rule in late 2012 and finalize the rule by late 2013.

An *Inside EPA* article (subscription required) reported that the expansion of TRI to include additional mining comes as the agency "is still weighing clarifications to the TRI reporting requirements for the metal mining industry." The 2001 *National Mining Association v. Browner* case and the 2003 *Barrick Goldstrike Mines v. Whitman* case challenged the EPA's definitions of "manufacturing" and "processing" in the mining context. The cases questioned the reporting requirement for toxic releases of naturally occurring substances brought to the surface by mining activities. The courts ruled in favor of the companies on several points, and the agency has been trying to adjust ever since.

As a result of the court cases, the EPA was to issue a rule to clarify the reporting obligations under TRI. On June 17, the EPA withdrew from consideration a final rule that clarified exemptions to its TRI reporting requirement.

Requiring Electronic Reporting

On May 19, the EPA announced its plans to issue a proposed rule requiring that TRI data be reported electronically. Though facilities may currently submit TRI reporting forms either electronically or by paper, electronic filing has been gradually increasing under agency encouragement.

The proposed rule would require facilities to use the TRI's web-based application, called the TRI Made Easy Web (TRI-MEweb), to report TRI data to EPA. This requirement would be significantly stronger than the agency's prior notice on Jan. 14, which only strongly recommended that facilities report TRI data electronically via the TRI-MEweb. In the notice, EPA reported that 94.6 percent of TRI submissions for reporting year 2009 were made electronically, using the TRI-MEweb application. It offered to assist facilities that do not file electronically by providing them with forms that could be filled out on a computer and then printed and mailed.

In its May 19 announcement, the EPA invited the public to make comments in an online discussion forum on its plans to issue a TRI electronic reporting rule. In particular, the EPA expressed an interest in receiving comments on the benefits and impact of using TRI-MEweb and facilities' experiences using the application. Though the public comment period closed on July 1, the comments are still accessible via the discussion forum's website. The EPA plans to include the discussion forum, including comments, in the docket labeled EPA-HQ-TRI-2011-0174, which will then be accessible on Regulations.gov.

Part of a Burden Reduction Initiative, TRI-MEweb is a web-based application that enables facilities to file TRI reports electronically. Among the benefits of electronic reporting, according to the agency, is that it significantly reduces data errors and allows instant receipt confirmation of submissions. Moreover, the application requires no downloads or software installs.

In the online discussion forum, OMB Watch emphasized its support of EPA's plans to require electronic reporting of TRI data, stating, "Electronic reporting improves the accuracy of data and eases public access to the information, leading to environmental and public health gains." Additionally, the electronic reporting system will reduce the processing burden on EPA and allow the agency to more quickly release the TRI data. Electronic reporting has been shown to substantially reduce administrative costs and burdens.

Though electronic reporting would be easier for facilities, there have been complaints about the web-based application and calls for the agency to make improvements to it. In several comments on the online discussion forum, users complained that the web-based application is not intuitive and there are difficulties getting new validating officials approved.

EPA has the authority to require electronic reporting of TRI data under the Government Paperwork Elimination Act (GPEA) and the agency's Cross-Media Electronic Reporting Regulation (CROMERR). The GPEA requires federal agencies to provide for the "option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper." The CROMERR provides the legal framework for electronic reporting for all EPA environmental regulations. EPA already moved to electronic reporting for new chemical notices under the Toxic Substances Control Act (TSCA) on April 6.

ExxonMobil's Pipeline Spill is a Revelation

On July 1, an estimated 42,000 gallons of crude oil poured out of ExxonMobil's Silvertip pipeline and into the Yellowstone River in Montana. Significant accumulations of oil have been found more than 40 miles downriver, and traces of oil have floated twice as far. While the cause of the spill has not been determined, speculation has centered on high river waters that could have exposed the pipe to damage.

In spite of numerous events like the BP oil spill and the Massey mine explosion, incidents like the Yellowstone River spill seem to be required to make clear the need for oversight of industry. "We need to figure out how this happened and take steps to make sure it doesn't happen again. Our water is our most precious resource and we've got to take every reasonable precaution to protect it," Rep. Denny Rehberg (R-MT) said July 5 about ExxonMobil's oil pipeline accident. It seems it took an oil spill to change Rehberg's attitude toward regulation. It was only six weeks ago that he offered an amendment that would weaken the regulatory authority of the Food and Drug Administration.

The Silvertip pipeline, a 20-year-old underground pipe, had recently drawn the attention of federal regulators. The U.S. Department of Transportation, which oversees pipelines, cited seven safety violations in a December 2010 letter and more "probable violations" in an additional letter in February. The problems included "inadequate pipeline markers in a housing development, a section of pipeline over a ditch covered with potentially damaging material and debris, vegetation in housing area covering a portion of line that prevented aerial inspections, and a line over a canal not properly protected against corrosion." ExxonMobil says that it had

corrected all the violations and, in a statement issued less than 48 hours after the pipeline burst, the company said that its pipeline "met all regulatory requirements."

Over the past ten years, there have been eight "major" accidents along the more than 6,500 miles of pipeline that stretch across the state of Montana.

A congressional inquiry into the Yellowstone River spill will begin July 14 with a hearing before the Subcommittee on Railroad, Pipelines and Hazardous Materials, part of the House Committee on Transportation and Infrastructure. The day before, two other Transportation and Infrastructure Subcommittees will hold a hearing entitled "Reducing Regulatory Burdens, Ensuring the Flow of Commerce, and Protecting Jobs: A Common Sense Approach to Ballast Water Regulation."

The tension between these two hearings is clear: as soon as one subcommittee finishes investigating the "burden" of an effective regulatory system, another will begin investigating how damage to the Silvertip pipeline went unaddressed until disaster struck.

House leadership has made "regulatory reform" a centerpiece of the agenda for this Congress, holding dozens of hearings across several committees. These anti-regulatory bills and amendments have filled the calendar – and perhaps none is more prominent than the Regulations from the Executive in Need of Scrutiny (REINS) Act, which is expected to be marked up soon.

The REINS Act would require both the House and the Senate to approve every new agency rule with an estimated economic impact (either cost or benefit) of $100 million or more or any rule with a "significant effect" on prices, competitiveness, productivity, or other economic factors. It would cover nearly every aspect of government operations: not only health, safety, and environmental protections, but also many rules covering civil rights, Medicaid, Head Start, taxes, and even subsidies to industry. The bill would give a congressional veto to agencies' safeguards.

If Rehberg meant what he said at the end of his statement ("the better approach is to make sure nothing like this can ever happen again"), he would be opposing legislation like the REINS Act and fighting to ensure that agencies like the Pipeline and Hazardous Materials Safety Administration have the resources they need to establish and enforce a system of public protections that helps keep national resources like water, air, and food safe.

OMB Publishes List of Upcoming Regulations

The Office of Management and Budget (OMB) published its spring *Unified Agenda* on July 7. The agenda is a compilation of regulations that agencies expect to advance between now and April 2012, as well as rules the agencies have completed in the past six months.

OMB releases the *Unified Agenda* twice a year, in April and October. While the release is habitually late, it is unusual for OMB to be almost three months behind schedule in publishing the document. As a result, agencies have completed many of the actions included in the agenda. But the agenda also provides a preview of the many regulations expected to be released in the coming year. Highlights of the agenda are discussed below, organized by agency.

U.S. Environmental Protection Agency (EPA)

EPA indicated it would finalize in July its transport rule, which regulates emissions from power plants that cause pollution in neighboring states. The rule was finalized on time on July 6. The Cross-State Air Pollution Rule (CSAPR) requires more than 20 states to reduce power plant emissions that contribute to ozone and fine particle pollution in other states.

EPA and the National Highway Traffic Safety Administration (NHTSA) will continue to work together on fuel efficiency and greenhouse gas emission standards for cars and light trucks manufactured in 2017 and beyond. In the fall of 2010, the two agencies published a Notice of Intent (NOI) indicating they were working on a proposal to raise emission standards to between 47 and 62 miles per gallon (mpg) by 2025. In meetings during the week of June 19, the Obama administration announced that it was considering requiring these emission standards to improve by five percent every year starting in 2017, with a final standard of 56.2 mpg for passenger vehicles manufactured in 2025. The administration now indicates it intends to publish a proposal in September and issue a final rule in the summer of 2012.

EPA and NHTSA have also recently finished a final rule that would set emission standards for heavy-duty vehicles. The rule was submitted to the Office of Information and Regulatory Affairs (OIRA) on July 7 for review. OIRA has 120 days to complete its review of the rule and return it to the agencies for publication in the *Federal Register*.

EPA has once again revised its timeline for the regulation of coal ash, likely due to intense pressure from industry. In December 2010, EPA indicated that it would not undertake coal ash regulation in 2011. However, on July 7, the agency submitted to OIRA for review a Notice of Data Availability (NODA) to provide industry, environmentalists, and others with new data EPA has available on coal ash. EPA originally released a NODA on coal ash in 2007 at the start of the rulemaking process, so advocates are hopeful that this indicates the process is moving forward.

Coal ash is a byproduct of coal combustion that can contain harmful chemicals such as arsenic, lead, and other heavy metals. It has been linked to cancer and other health problems. In June 2010, the agency released a highly contentious proposed rule that sought to determine whether coal ash should be regulated as a hazardous waste or treated as conventional waste. Along with the proposal, EPA released the original draft the agency submitted to OIRA and the subsequent

markup. This markup, along with the stark differences between EPA's original draft and the proposal, may indicate significant industry interference in the rulemaking process.

Consistent with a court order from 2008, EPA proposed in March changes to its air toxics rule that regulates mercury emissions from coal and oil power plants. While EPA regulates mercury emissions from a wide variety of sources, power plants had not been subject to this regulation. The state of New Jersey, along with others, sued EPA, requesting that it not exclude power plants from the mercury standard. In 2008, the D.C. Circuit Court of Appeals vacated EPA's exemption rule and required the agency to regulate power plant mercury emissions. EPA extended the public comment period to accept input through Aug. 4 but still expects to release the final rule by the mid-November deadline.

Occupational Safety and Health Administration (OSHA)

OSHA is moving forward slowly with its Injury and Illness Prevention Program (I2P2). First mentioned in the *Unified Agenda* in the fall of 2010, the I2P2 regulation would require employers to create and implement an injury prevention program to help protect workers from dangerous situations and health hazards in the workplace. OSHA indicates that it has begun an analysis of the effect of such a rule on small businesses. If finalized, this rule will be an important step toward protecting workers. The current injury and illness prevention regulation is a voluntary program that has come under scrutiny in recent months for being insufficient to protect workers.

In January 2010, OSHA published a proposed rule to add a column to its injury reporting form for employers to report work-related musculoskeletal disorders (MSD). One year later, OSHA pulled the proposal due to industry complaints that the column would create an undue reporting burden on small businesses. In the new agenda, OSHA lists the MSD regulation as a proposed rule but provides no timeline for a revised proposal. Instead, it has reopened the rulemaking record, allowing the public to submit more comments on the proposal. The agency hopes to analyze the newly submitted comments by the end of July.

In February, OSHA submitted to OMB a long-awaited crystalline silica rule that would protect workers, in industries like concrete and glass manufacturing and a variety of construction activities, from exposure to crystalline silica (through dust inhalation or in mineral form). Long-term exposure to the substance is linked to debilitating illness and death. OSHA's proposal should have been released for publication by May 15, but it has been under review at OIRA for almost 150 days, significantly exceeding the 120-day window for review. According to the agenda, the agency expects to hold hearings on its proposal in October. OSHA first put crystalline silica on the agenda in 1997.

Mine Safety and Health Administration (MSHA)

Coal miners are also adversely affected by exposure to crystalline silica. Coordinating with OSHA's efforts to regulate exposure to the substance, MSHA anticipates issuing a proposed rule as soon as August to update its exposure standards.

In February, MSHA published a proposed rule that would clarify the criteria by which mine operators' patterns of health and safety violations are assessed. As proposed, this rule would take steps to prevent blatant violations of mine safety regulations in order to catch delinquent operators such Massey Energy, whose neglect caused the Upper Big Branch disaster in April 2010 that killed 29 miners. However, MSHA is moving slowly with the regulation. The comment period was extended through April and no final rulemaking is planned for the coming year.

Food and Drug Administration (FDA)

Two proposed rules listed in the *Unified Agenda* were published by FDA in April. The first would require chain restaurants to provide patrons with nutrition labeling on standard menu items. The second would require nutrition information to be provided for certain vending machine items. These rules are part of FDA's roll-out of the Affordable Care Act of 2010 and would provide consumers with more accurate information on the food they purchase. FDA has not listed a date for the finalization of either rule.

FDA intends to propose in October a rule that will outline efforts to protect the public from intentional food contaminations. The proposal is expected to lay out ways to identify hazards and protect the food supply chain at vulnerable points, restrict the distribution of contaminated food, and target food products that are vulnerable to contamination. According to the Food Safety and Modernization Act of 2010, FDA must publish a final rule on intentional contamination by July 2012.

Federal Motor Carrier Safety Administration (FMCSA)

Two proposals out of FMCSA intend to ensure drivers of commercial vehicles do not create hazards on the road. First, FMCSA released in December 2010 a proposed rule to restrict cell phone use while driving a commercial vehicle. Numerous studies have indicated that talking on a cell phone is linked to increased accident rates. Second, FMCSA intends to issue a proposed rule in December that will create an online database for positive alcohol and substance tests performed on drivers of commercial vehicles. Prospective employers will be able to access the database to see if a driver has tested positive in the past on an alcohol or substance abuse test and to ensure the driver has completed the Department of Transportation's return-to-duty process before hiring the driver.

The full *Unified Agenda* is available online. Some agencies will hold web conferences or other public discussions on their plans. For example, the Department of Labor is holding web conferences July 11-15 to allow the public to weigh in on its agenda. Visit an agency's website or look at its agenda preamble for more information on how to comment on its plan for the coming year.

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