



AFS Government Affairs Update – February 2018

Lawmakers returned to Washington following a one-week recess, facing deadlines on budget and immigration. The House plans to meet on just Monday and Tuesday, cancelling other activity, as evangelist Billy Graham will lie in honor in the Capitol Rotunda on Wednesday and Thursday.

- Congress appears poised to miss a March 5 deadline to pass a fix for the Deferred Action for Childhood Arrivals (DACA) program. The legislative stalemate comes after the Senate earlier this month rejected four proposals. Republican senators are predicting that a fix for a key Obama-era immigration program will end up in next month's government funding bill, as they search for ways to break a months-long stalemate.
- Despite a bipartisan, two-year, broad spending agreement, the government is set to run out of money on March 23. Congress has until March 24 to pass a government funding bill and prevent the third partial shutdown of the year.
- House Education and Workforce Subcommittee will hold a hearing on February 27th. This hearing, "A More Effective and Collaborative OSHA: A View from Stakeholders", will examine how OSHA can work with stakeholders to strengthen workplace safety. Former OSHA Administrator, David Michaels, will be the Democratic witness. Also on Tuesday, the House Energy and Commerce Committee's energy subcommittee will hold a hearing on the state of the United States' energy infrastructure.
- The seventh round of negotiations for the North American Free Trade Agreement (NAFTA) began Sunday, February 25 and runs through Saturday, March 3, 2018 in Mexico City.
- **Register TODAY for the 2018 AFS Government Affairs Fly-In - Advocate for Metalcasting Today – May 15-16 - Hyatt Regency Capitol Hill** – The planning committee is making final changes to the agenda - Register today and secure your hotel room asap – the hotel will sell out. (Information below) Sessions will cover the changing face and direction of EPA, the administration's infrastructure plan, the 2018 trade agenda, workforce development, and updates on OSHA's regulations and final silica rule.

AFS Submits Dozens of Questions to OSHA Seeking Clarification on Agency's Silica Rulemaking

In January 2018, AFS submitted 70 questions to the Occupational Safety and Health Administration (OSHA) to clarify various aspects of the Agency's final crystalline silica rulemaking which is slated to go into effect for general industry on June 23, 2018.

AFS, in conjunction with the society's safety and health committee, drafted questions related to key components of the rulemaking involving, but not limited to sweeping, compressed air, regulated areas, exposure assessments, respiratory protection/air supplied hoods, engineering controls, and written control exposure plans.

OSHA staff is in the process of reviewing these questions. AFS is continuing to work with these federal officials to make improvements to the rule and how it is enforced to achieve the meaningful safety and health improvements. The goal is for OSHA to incorporate the questions into a final set of Frequently Asked Questions (FAQs) which would provide guidance to employers and employees regarding the interpretation of various provisions of the rule and how OSHA intends to enforce certain requirements of the standard. The final FAQs would ultimately be incorporated into an

enforcement directive prepared by the agency for the rule, as it applies to general industry. AFS' attorney is having an initial meeting with OSHA officials the week of February 26. In addition, an AFS foundry member company will be hosting OSHA at their facility on March 20 to review several aspects of the OSHA rulemaking. AFS will also be participating in this tour and meeting. In addition, AFS will be hosting monthly webinars starting the week of Feb. 26 to provide more detailed information on implementation of the silica rule.

Trump Administration Releases Infrastructure Plan

In February, the White House unveiled a 55-page infrastructure proposal [outline](#). The proposed package would cost \$1.5 trillion and would focus on public-private partnerships and funding from state and local governments. The package contains four sections, which include: 1) incentive programs for funding and financing of infrastructure improvements; 2) provisions for improving highway, transit, and rail programs; 3) improvements to the Infrastructure permitting process; and, 4) increasing access to workforce development. The proposal also addresses the need for financing water infrastructure projects and inland waterways.

The plan proposes streamlining environmental reviews by putting a single agency in charge of the work, imposing a 21-month deadline for completing those assessments and requiring final decisions on permitting three months after that.

House Transportation Committee. Chairman Bill Shuster (R-PA), is working on a congressional infrastructure package with ranking member Peter DeFazio (D-OR), that is expected to be ready closer to summer. AFS looks forward to working with Congress and the Administration on enacting long-term infrastructure funding solutions and environmental review and permit streamlining reforms as part of an infrastructure package this year. AFS sent a letter in January to President Trump and key congressional lawmakers urging passage of a significant, long-term infrastructure investment bill this year. AFS is participating in the *Infrastructure Working Group Hill Day*, organized by the National Association of Manufacturers, on March 6 & 7, as well as sponsoring the reception being held in the House Transportation Committee hearing room during this event.

U.S. Commerce Department Proposes Tariffs on Steel and Aluminum Imports

On February 16, 2018, the US Department Commerce's released its proposed recommendations on its 232 investigations on the impact of steel and aluminum imports. Commerce Secretary Ross proposed a 24% global tariff on steel shipments coming into the U.S. and a 7.7% duty on aluminum imports, as the Commerce Department "found that the quantities and circumstances of steel and aluminum imports threaten to impair the national security." Section 232 of a 1962 trade law gives the president the power to apply higher tariffs and quotas on imported steel and aluminum for national security reasons. It has not been invoked since 2001.

The report highlights numerous options of action for President Trump, including:

Steel

1. A global tariff of at least 24% on all steel imports from all countries, or
2. A tariff of at least 53% on all steel imports from 12 countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russia, South Africa, Thailand, Turkey and Vietnam) with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the United States, or

3. A quota on all steel products from all countries equal to 63% of each country's 2017 exports to the United States.

Aluminum

1. A tariff of at least 7.7% on all aluminum exports from all countries, or
2. A tariff of 23.6% on all products from China, Hong Kong, Russia, Venezuela and Vietnam. All the other countries would be subject to quotas equal to 100% of their 2017 exports to the United States, or
3. A quota on all imports from all countries equal to a maximum of 86.7% of their 2017 exports to the United States.

Note: As part of the domestic aluminum value chain, aluminum castings were to ensure that producers and fabricators of intermediate aluminum products used in manufacturing finished products experience beneficial effects.

The Commerce Department also recommended an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) lack of sufficient U.S. production capacity of comparable products; or (2) specific national security-based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

The 232 reports are currently under consideration by the President and by law, is required to make a decision by mid-April. Bloomberg news recently reported that Trump has told people close to him that he wants a global tariff of 24 percent on steel imports, and that he's leaning toward one as high as 10-percent on aluminum imports - higher than Commerce's recommendations. He is also said to be considering going public with his decision during a rally in Pennsylvania ahead of the March 13 special election in the state's 18th congressional district. For more information regarding the Commerce Department's report, go to: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.

OSHA Regulatory Agenda Shows Agency to Seek Input on Several Outdated Rules

In December, the U.S. Department of Labor released its [fall 2017 regulatory agenda](#). The regulatory plan and agenda is published twice a year. It identifies regulatory priorities and contains additional details about the most significant regulatory actions that agencies expect in the next 6-12 months. OSHA announced it would be releasing Requests for Information (RFIs) for three outdated rules. They include rules governing: Mechanical Power Presses – Feb. 2018; Powered Industrial Trucks – Dec. 2017; and, Lock-Out/Tag-Out – April 2018. To date the agency has not released the RFIs. AFS's Safety and Health Committee expects to submit comments on each of these RFIs.

In addition, the agency plans on OSHA intends to issue a proposal to reconsider, revise, or remove provisions of its electronic recordkeeping regulation which went into effect in 2016 ([Improve Tracking of Workplace Injuries and Illnesses final rule](#)), in particular the anti-retaliation and drug testing provisions.

ICE Steps Up Immigration Raids

Federal enforcement officials are increasing their efforts to crack down on undocumented workers and the businesses that employ them. According to government statistics, Immigration and Customs Enforcement (ICE) arrests went up by more than 43% between late January and August 2017

compared with the same period a year earlier. In 2017, ICE conducted approximately 1,300 immigration raids and [reports indicate](#) that the agency has set a goal of at least 5,000 enforcement visits at U.S. workplaces in 2018.

Most of the latest raids by ICE have been concentrated in California. [ICE agents visited 122 businesses between February 11 and February 15](#), in the largest sweep this year. Each of these businesses will have their hiring records audited to determine whether they are in compliance. If companies are not in compliance, they could face civil fines and potential criminal prosecution. Moreover, President Trump's 2019 budget proposal includes a 35% increase in penalties for employers that hire undocumented workers. Metalcasters should ensure that their **I-9 compliance programs** are in place, up-to-date, and followed. All current employees hired after November 6, 1986 must have an I-9 form on file.

[Congress Approves Two-Year 'Cadillac Tax' Delay](#)

Congress passed, and President Trump signed a stopgap spending bill (H.R.195) on Jan. 22, to end a government shutdown and fund government operations through Feb. 8. Included in the measure was a two-year delay on the Affordable Care Act's (ACA) 40% excise tax on high-value health care plans, known as the Cadillac tax. The effective date is now 2022. The Cadillac tax was created as part of the ACA largely as a way to help fund benefits to the uninsured under the law. Starting in 2018, employers were supposed to begin paying a 40% tax on costs of health plans that are above \$10,200 per individual and \$27,500 for family coverage.

"AFS has long advocated for full repeal of the excise tax and applauds the new two-year delay," said Doug Kurkul, AFS CEO. AFS will continue to support and encourage Congress to fully repeal the excise tax. Repealing the Cadillac tax has strong bipartisan support in both chambers. The measure also delays the medical device tax—a 2.3 percent tax on the sale of certain devices—until 2020; and, tax had previously been suspended for 2016 and 2017; and, suspends for one year the health insurer tax (HIT).

[Higher Fines for Environmental Violations in 2018](#)

EPA has again issued final regulations adjusting the maximum civil penalty dollar amounts for violations of various environmental regulations. ([83 Fed. Reg. 1190](#)) EPA is required to adjust its civil penalties annually, as required by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. Below are the new 2018 penalty maximum levels:

- **Clean Water Act** (permits effluent limits): Violations up to \$53,484 per day, per violation (up from \$52,414); for purposes of Section 404, a day of violation may be a day that actual discharge of dredged or fill material takes place or may also include any day that such dredged or fill material remains in the waters or wetlands.
- **Clean Water Act** (oil and hazardous substance discharges): Violations up to \$46,192 per day, per violation (up from \$45,268).
- **Resource Conservation and Recovery Act** (hazardous waste storage, management, and disposal requirements): Violations up to \$72,718 per day, per violation (up from \$71,264).
- **Toxic Substances Control Act** (chemical management, reporting, and recordkeeping): Violations up to \$38,892 per day, per violation (up from \$38,114).
- **Emergency Planning and Community Right-to-Know Act**: Violations up to \$55,907 per day, per violation (up from \$54,789).

EPA Delays WOTUS Rule for Two Years

Implementation of the Obama administration's 2015 Waters of the United States (WOTUS) rule, which significantly expands federal environmental permitting jurisdiction, has been delayed. On Jan. 31, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) took AFS-supported action that delays the 2015 WOTUS rule from taking effect until February 2020. This announcement maintains the status quo nation-wide and provides continuity and regulatory certainty for metalcasters while the agencies continue to work to repeal and replace the 2015 WOTUS rule.

The 2015 rule re-defined jurisdictional "waters of the United States" under the CWA, and had far-reaching implications for project development across manufacturing, energy, water, agricultural, construction, and transportation sectors. It was designed to clarify federal agencies' authority and give them the power to regulate small waterways such as ponds, headwaters and wetlands.

The move follows a Supreme Court ruling in Jan. 2018 that said legal challenges to the Waters of the U.S. rule should be decided in federal district courts, resulting in the lifting of a stay issued by an appeals court blocking the 2015 rule from going into effect. The agency is currently reviewing public comments for its 2017 proposal to rescind the rule. It is also working with the Corps to develop a potential replacement rule. This action follows the February 28, 2017 Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." EPA Administrator Scott Pruitt has said a rule to replace WOTUS will be finished by the end of this year. Additional information on this rule can be found at: www.epa.gov/wotus-rule.

National Labor Relations Board Issues Request for Information on Election Rule

In 2014, the National Labor Relations Board (NLRB) published its "ambush election" rule, which was intended to decrease the time between the filing of a petition for representation and a union election. The rule, which became effective in April 2015, changed the scope of pre-election hearings and the timing and content of pre-election disclosures and required that the time between petition and election be less than thirty days. Employers and industry groups unsuccessfully challenged the rule in federal court [*Associated Builders and Contractors of Texas v. NLRB*, 826 F.3d 215 (5th Cir. 2016).]

In December, the NLRB issued a request for information (RFI) regarding whether the NLRB should retain without change, modify, or rescind the "ambush election" rule. The RFI posed three questions to the public: 1. Should the 2014 Election Rule be retained without change? 2. Should the 2014 Election Rule be retained with modifications? If so, what should be modified? 3. Should the 2014 Election Rule be rescinded? The [deadline](#) to respond to the Board's request for information is March 19, 2018. AFS will be joining on comments through the Coalition for Democratic Workplace.

Specialty Healthcare Reversed by NLRB

On December 15, the NLRB [issued a ruling](#) in *PCC Structural Inc.* abandoning the Obama administration's Board's *Specialty Healthcare* decision, which allowed employees to organize in "micro units." The decision reinstated the previous standard that employees have to share an "overwhelming community of interests" to be an appropriate bargaining unit. The NLRB said they would no longer apply the *Specialty Healthcare* decision when evaluating petitions for union representation, but it will evaluate individual cases "taking into consideration the interests of

employees both within and outside the petitioned-for unit, in light of the policies and purposes of the [National Labor Relations] Act.”

The Board also said that the *Specialty Healthcare* decision gave too much power to union organizers to decide which employees should be included in the bargaining unit and inappropriately allowed unions to gerrymander the workforce, only choosing the workers who wanted to organize and effectively disenfranchising other workers. We anticipate that organized labor will look for opportunities to challenge this decision in federal courts. Welders at Precision Castparts in Oregon voted to join a union in Sept. 2017. Union organizers have filed four unfair labor action charges against PCC Structural, a subsidiary of the Portland company. They allege that Precision Castparts has refused to recognize or bargain with the union, and that it's diverting work from its union welders to subcontractors.

Advocate for Metalcasting Today - 2018 AFS Government Affairs Fly-In - May 15-16 - Hyatt Regency

Join us for the American Foundry Society’s annual Government Affairs Fly-In on **May 15-16, 2018 in Washington, D.C.**! For two days, you will learn about the latest developments on the most pressing issues that are impacting the U.S. metalcasting industry, meet with your lawmakers in pre-scheduled meetings, and advocate for the key role that foundries play in your state and the manufacturing supply chain.

Sessions will cover the economy, the changing face and direction of EPA, the administration's infrastructure plan, the 2018 trade agenda, and updates on OSHA’s regulations and final silica rule. At the Fly-In, you will have the opportunity to speak with legislators and regulators and hear the status of the issues that impact your business the most.

The Government Affairs Fly-In is your chance to keep the momentum going as we work to keep metalcasting front and center with key officials. We are heading into a contentious mid-term election and government officials need to hear from you about the priorities that affect our industry and your company.

Preliminary Agenda

Tuesday, May 15, 2018

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| 8:30 a.m. – 4:30 p.m. | Conference Registration |
| 10:00 a.m. – 12:15 p.m. | Conference Opening Remarks & General Sessions |
| 12:30 – 2:00 p.m. | Keynote Luncheon Mike Allen - Political Journalist - <i>Insights on the Trump Administration, Congress and 2018 Midterm Elections</i> |
| 2:15 – 4:30 p.m. | General Sessions
State Breakout Sessions: Preparation for Capitol Hill Visits |
| 5:30 – 7:30 p.m. | Metalcasting Industry Welcome Reception & Recognition Awards to Members of Congress at the Capitol Hill Club |

Wednesday, May 16, 2018

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| 7:30 – 9:00 a.m. | Town Hall Meeting & Breakfast |
| 9:00 a.m. – 5:00 p.m. | Metalcasting Industry Advocacy Day – Capitol Hill |

Link to Registration - <http://www.afsinc.org/GovLanding2018.cfm?navItemNumber=19501>

Housing and Fly-In Location

Hyatt Regency Washington on Capitol Hill - 400 New Jersey Avenue NW - Washington, DC 20001

Phone: 202-737-1234 - The AFS \$339 single or double rooms.

Reservations

To reserve a room, call the Hyatt Regency directly at 202-737-1234 and mention you are with the AFS Government Affairs Fly-In. Or go online to book your reservation

at: <https://aws.passkey.com/go/AFSConference>

The cut-off date for reserving rooms in the AFS room block is **Monday, April 23, 2018**. Any reservations accepted after the cut-off date shall be accepted at the AFS rate based on availability.

For additional information, contact, Stephanie Salmon, American Foundry Society – Washington Office, 202/452-7135 or ssalmon@afsinc.org

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