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MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH:


RICHARD MENDELSON
Acting Deputy Assistant Secretary

FROM:


THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT:

Process Safety Management Retail Exemption Enforcement Policy

OSHA's process safety management (PSM) standard, which contains requirements for preventing or minimizing toxic, fire, and explosion hazards associated with catastrophic releases of toxic, reactive, flammable, or explosive chemicals, does not apply to "retail facilities." 29 CFR 1910.119(a)(2)(i). The PSM standard does not define the term "retail," and on September 23, 2016, the United States Court of Appeals for the District of Columbia Circuit invalidated a memo stating OSHA's interpretation of that term.¹ In light of the D.C. Circuit's decision, the following PSM enforcement policy guidance applies:

OSHA will not issue citations under the PSM standard for employers in the following North American Industry Classification System (NAICS) codes:

- 424510 – Grain and Field Bean Merchant Wholesalers
- 424590 – Other Farm Product Raw Material Merchant Wholesalers
- 424910 – Farm Supplies Merchant Wholesalers

OSHA expects employers in these industries to continue to comply with other applicable OSHA standards, including 29 CFR 1910.109(i) (storage of ammonium nitrate), 29 CFR 1910.111 (storage and handling of anhydrous ammonia), 29 CFR 1910.120 (hazardous waste operations and emergency response), and 29 CFR 1910.1200 (hazard communication). These standards are valuable agency tools to ensure the safety of workers in these industries. In particular, OSHA standard 1910.111 addresses similar types of ammonia hazards as the PSM standard. OSHA will seek to maximize compliance among the covered employers through strong enforcement.

¹ See *Agricultural Retailers Ass'n v. US Dep't of Labor*, 837 F.3d 60 (D.C. Cir. 2016).

For all other industries subject to PSM coverage, compliance officers should exercise enforcement discretion in accordance with the following explanation from the preamble to the PSM standard:

With respect to the exclusion of retail facilities . . . OSHA believed that such facilities did not present the same degree of hazard to employees as other workplaces covered by the proposal. Therefore, OSHA should not require a comprehensive process safety management system in addition to other applicable OSHA standards addressing flammable and combustible liquids, compressed gases, hazard communication, etc., for retail facilities

Certainly highly hazardous chemicals may be present in [retail] . . . operations. However, OSHA believes that chemicals in retail facilities are in small volume packages, containers and allotments, making a large release unlikely. OSHA received few comments disagreeing with the exemption of retail facilities (e.g., gasoline stations). OSHA has retained the exemption in the final rule.

57 Fed. Reg. 6356, 6369 (Feb. 24, 1992).

Please direct questions to the Office of Chemical Process Safety and Enforcement Initiatives at (202) 693-1921.