

Questions and Answers – PSM Retail Exemption Policy

What is the Process Safety Management Standard?

To help prevent unexpected releases of toxic, reactive, or flammable liquids and gases in processes involving highly hazardous chemicals, OSHA has issued the Process Safety Management of Highly Hazardous Chemicals standard (29 CFR 1910.119), which contains requirements for the management of hazards associated with processes using highly hazardous chemicals. Regardless of the industry that uses these highly hazardous chemicals, there is a potential for an accidental release any time they are not properly controlled, creating the possibility of disaster.

Process safety management (PSM) is addressed in specific standards for the general and construction industries. OSHA's standard emphasizes the management of hazards associated with highly hazardous chemicals and establishes a comprehensive management program that integrates technologies, procedures, and management practices.

What is the Retail Exemption and what will the revised guidance do?

The PSM standard exempts retail establishments, but does not define what a retail establishment is. The preamble to the standard explained that the exemption was adopted because hazardous chemicals would be present in these facilities only in small volume packages, containers and allotments, and therefore retail facilities would not present the same degree of risk of a catastrophic release as other workplaces. It listed gasoline stations as one example of such a facility. The previous interpretations of the retail facility exemption were inconsistent with both the standard's protective purpose, and the explanation provided in the preamble, and removed facilities like West Fertilizer from OSHA oversight under the PSM standard. The new interpretation will make the definition of a retail establishment consistent with the intent described in the preamble to the final PSM rule and to match the common definition of retail establishment used by the Department of Commerce.

Why will OSHA modify its retail exemption?

The President, in Executive Order 13650, directed OSHA to identify any changes that need to be made to the retail exemption in order to enhance safety and security in chemical facilities. The action that OSHA is taking is intended to improve the safety and security for American workers and neighboring communities, allowing for inspections of processes involving highly hazardous chemicals at facilities and helping to prevent incidents like the West Fertilizer explosion.. OSHA will modify its interpretation of the retail exemption to be consistent with the intent described in the preamble to the final PSM rule and to match the common definition of retail establishment used by the Department of Commerce. The previous interpretation exempted facilities like West from the requirement of the PSM standard and prevented OSHA from performing regular oversight.

How does the interpretation relate to Executive Order 13650 and the incident at West Fertilizer?

The President issued Executive Order 13650 shortly after the incident at West Fertilizer in order to improve chemical facility safety and security. Agencies involved in the execution of the order examined all regulatory and policy gaps that allowed West Fertilizer, and other facilities storing, manufacturing, or handling large inventories of hazardous chemicals, to operate without sufficient and effective oversight. OSHA found policy and regulatory gaps, specifically that the previous interpretation of retail facility prevented OSHA from routinely overseeing or inspecting highly hazardous sites, such as West.

The previous interpretation for example, prevented OSHA from including facilities like West in national or local emphasis programs such as OSHA's Chemical Facilities National Emphasis Program. Fixing the gaps clarifies regulatory coverage for facilities and helps OSHA better reduce hazards at facilities holding large inventories of hazardous chemicals in a more targeted way.

When does the new interpretation of the retail exemption take effect?

As with any OSHA interpretation, it takes effect immediately. However, because the new interpretation changes long-standing policy on this issue, for the first six months after this announcement, OSHA plans to use its enforcement discretion when inspecting facilities formerly covered by the old policy and will generally not cite those facilities during this period to give them time to come into compliance.

The only exception to this policy will be if OSHA discovers conditions at such a facility that expose workers to an immediate and severe danger, and OSHA determines that the employer has not made a reasonable good faith effort to eliminate or substantially control the hazard. In this rare circumstance, the agency may consider enforcement action to address the immediate and severe danger. Any enforcement action in this situation must be approved by OSHA's National Office.

Furthermore, if compliance officers find PSM hazards at establishments inspected during the delay period, the employer will be referred to OSHA's compliance assistance and consultation teams for assistance with those specific hazards. Compliance officers may direct employers to (online compliance guidance (<http://www.osha.gov/SLTC/processsafetymanagement/index.html>) or third parties such as the Agricultural Retailers Association (www.aradc.org) who have developed compliance tools.

How will the upcoming modification to OSHA's PSM retail facility interpretation affect employers?

Employers with covered processes are already effectively complying with most of OSHA's PSM requirements through requirements of EPA's Risk Management Program (RMP) rule (40 CFR 68)¹, known as RMP Program 2. Therefore, employers would have to review their current process safety management systems to ensure that they meet any additional requirements of PSM. This could include some modifications to existing management system elements such as: standard operating procedures, hazard analyses, employee participation in the development and

¹ <http://www2.epa.gov/sites/production/files/2013-10/documents/chap-02-final.pdf>

implementation of the process safety management systems, reviews prior to startup of new or modified processes, welding safety procedures, and safety implications of process or equipment changes affecting covered chemicals (Management of Change). OSHA believes the process safety information, maintenance, and emergency response elements that are already included in RMP2 would likely need no further modification by the employer to be PSM-compliant.

Additionally, the facilities covered by RMP Program 2 and OSHA's current retail exemption interpretation policy, are mostly simple storage and handling facilities; therefore, any additional PSM program development, outside that already developed for RMP Program 2 purposes will be relatively straightforward and simple. Common examples include anhydrous ammonia (AA) or liquefied petroleum gas (LPG) dispensing. These dispensing operations comprise primarily a pressure vessel, a simple piping network, a pump, and a delivery hose. Additional actions necessary to comply with PSM in simple, pure chemical service such as AA and LPG dispensing should not cause significant new burdens for employers.

Will small employers receive help developing, initiating, and instituting my PSM program?

Yes. Each state has an OSHA funded On-site Consultation Program that offers free and confidential safety and occupational health advice to small and medium-sized businesses in all states with priority given to high-hazard worksites. These state-run on-site Consultation services are completely separate from OSHA enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards (including those involving highly hazardous chemicals), provide advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs. About 98 percent of all businesses assisted by OSHA's On-site Consultation Program have fewer than 250 employees at the worksite. Small businesses subject to the PSM standard can contact the OSHA On-site Consultation office in their state to review their current PSM systems to ensure that these businesses meet the requirements. Employers can visit the OSHA Web site (<https://www.osha.gov/dcsp/smallbusiness/consult.html>) to find contact information for their local On-site Consultation provider to obtain assistance.

Note also that employers using OSHA's free consultation service available are deferred from OSHA's programmed/scheduled inspections (i.e., those scheduled as part of National or Local Emphasis Programs) while the consultation remains "in progress." This period encompasses the time between the onset of the consultation and the final correction dates, including any extensions. Inspections of fatalities, reported injuries, and complaints are not deferred.

Did OSHA estimate the economic impact of the policy changes?

OSHA estimates that changing the interpretation of the retail exemption may affect up to 4,800 facilities. Because a majority of these facilities have only one covered chemical (Anhydrous Ammonia), tend to be quite small, and are already required to comply with EPA's Risk Management Program 2 requirements^[1], OSHA expects no individual businesses will be significantly adversely affected. Specifically, OSHA estimates that the initial national cost could be as low as \$10.4 million (or \$2,160 per facility) with ongoing annual costs a fraction of the initial costs. The current requirements of RMP, Emergency Planning and Community Right-to-

Know Act (EPCRA), and Superfund Amendments and Reauthorization Act (SARA) Title III caused industries, including fertilizer distribution, to initiate safety management practices such as hazard analysis, training, maintenance, and emergency planning. OSHA's Process Safety Management (PSM) standard cohesively integrates five additional elements to the already robust safety management system at these facilities: management of change, contractor management, prestart-up safety review, hot work, and employee participation. Employers would only have to review their current process safety management systems to ensure that they meet any additional requirements of PSM. This could include some modifications to existing management system elements such as standard operating procedures and hazard analyses, procedures for ensuring employee participation, procedures prior to startup of new or modified processes, welding safety procedures, and assessing the safety implications of any process or equipment changes that may be made affecting covered chemicals

Does PSM apply to non-manufacturing facilities, such as rural, agricultural-related facilities?

Yes. OSHA has consistently applied the PSM standard to non-manufacturing processes such as those at rural, agricultural-related distribution facilities. In fact, most PSM-covered processes involve a non-manufacturing application of the highly hazardous chemical (ammonia refrigeration, chlorine disinfection, chemical storage). Anhydrous ammonia storage at distributorships is no different.

Will this change in the interpretation of the retail exemption result in the closure of local facilities, the loss of jobs, higher food production costs?

No. OSHA does not believe that a change in the interpretation of the retail exemption will result in significant design changes at distributorships. See the question on economic impacts above.

Will this change mean that distributorships will be required to deliver Anhydrous Ammonia in smaller quantities?

No. Distributorships will be able to conduct business the same way they do now. They will just be required to comply with those PSM requirements that are not now required under EPA's Risk Management Program. The size of storage vessels and shipments likely will not change. It is important to note that OSHA does not regulate shipment of anhydrous ammonia in nurse tanks nor does OSHA regulate the application of anhydrous ammonia as a soil nitrifier at farms.