

AAPFCO Security Sub-Committee

Security Briefing

AAPFCO Summer Annual 2016

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Pittsburgh, PA

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Ammonium Nitrate Issues

Ammonium Nitrate Security Program

- Suspension of rulemaking
- Department of Homeland Security (DHS) had suspended the rulemaking and is engaging with Congress and stakeholders regarding a study that would review chemicals used to make improvised explosive devices (IEDs).



DHS to initiate studies

Safe Handling of IED Precursor Chemicals

- In mid-May, the Department of Homeland Security (DHS) sent a letter to Congressman Michael McCaul (R-Texas), chairman of the House Committee on Homeland Security, in response to a committee inquiry.
- DHS plans to initiate two related studies shortly on the matter of secure handling of improved explosive devices (IED) precursor chemicals, including a study to examine the appropriateness and practicality of imposing controls on certain precursor chemicals used in the manufacturing of IEDs and a study of the supply chains of the most commonly used IED precursor chemicals.
- DHS believes the two studies will take 9-18 months.



CSB releases report on the West, TX Incident

- Link for CSB Report:
- Link to video: <http://www.csb.gov/chemical-safety-board-releases-new-safety-video-dangerously-close-explosion-in-west-texas-detailing-report-findings-and-recommendations-on-2013-fatal-west-fertilizer-company-explosion-and-fire/>
- **Chemical Safety Board Releases Video on West, Texas, Incident**
- The Chemical Safety Board (CSB) posted a new as part of its investigation of the West, Texas, fertilizer incident. The video addresses findings in the CSB report and contains a re-creation of the incident. The lack of zoning restrictions and associated encroachment of the surrounding community on the facility are emphasized. It was also noted this encroachment phenomenon is not limited to Texas or to fertilizer facilities. The video also reiterates recommendations outlined in the CSB report related to upgrades to the OSHA Process Safety Management requirements and EPA Risk Management Plan (RMP) Rule to address the potential hazards of fertilizer grade ammonium nitrate.



Chemical Sector Security Summit

- On July 19-21, TFI and numerous TFI members participated in the 10th Anniversary Chemical Sector Security Summit in Alexandria Va.
- Several officials at the Department of Homeland Security spoke, including Deputy Secretary Alejandro Mayorkas and Under Secretary Suzanne Spaulding. Director of the Infrastructure Security and Compliance Division,
- David Wulf, spoke at length on the past, present, and future of the Chemical Facilities Anti-Terrorism Standards program, including a study that will commence in August on chemical precursors used with improvised explosive devices. Director Wulf said the study informs future changes to the Ammonium Nitrate Security Program and would take approximately a year to complete.
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- ResponsibleAg Executive Director Bill Qualls and Billy Pirkle of Crop Protection Services also spoke to attendees about ResponsibleAg's role in industry safety and security.



**Executive Order Improving Chemical Facility Safety and Security -
August 1, 2013**

Update on Implementation of Executive Order 13650

- DHS proposed revision of CFATS
- The Department of Homeland Security (DHS) is committed to strengthening the Chemical Facility Anti-Terrorism Standards (CFATS) program and plans to implement an improved risk tiering methodology this coming fall.
- In the near future, DHS expects to publish a *Federal Register* notice informing the public of our intention to begin taking steps towards implementation of the improved tiering methodology for chemical facilities of interest. The notice will temporarily suspend the requirement to submit Top-Screens and Security Vulnerability Assessments in order to allow for a phased roll out of the new Chemical Security Assessment Tool (CSAT) 2.0 surveys. CSAT 2.0 consists of an improved CSAT Top-Screen, improved Security Vulnerability Assessment (SVA), and an improved Site Security Plan. Once the proposed revisions are approved by the Office of Management and Budget, chemical facilities of interest will be notified to submit their Top-Screen using CSAT 2.0.

Update on Implementation of Executive Order 13650

EPA

- **TFI Meets with Environmental Protection Acting Deputy Agency Administrator**
- TFI Vice President of Public Policy Andy O'Hare participated in a meeting early March with Stan Meiburg, Environmental Protection Agency (EPA) Acting Deputy Administrator. Mr. Meiburg addressed a number of priority issues for the Obama Administration, including the Risk Management Program (RMP) proposal signed in early March by the EPA Administrator.
- He explained that the agency intends to complete work on the RMP rule before the end of the current administration, though he noted meeting this deadline would be very challenging.
- TFI has filed comments on the proposed RMP rule on May 13, 2016 and has raised concerns about the requirements for:
 - mandating "Independent Third-Party" Audits
 - Proposed information disclosure and notification requirements



Update on Implementation of Executive Order 13650

Congress Expresses Concern with EPA's RMP Proposed Rule

- During the week of May 9th, members of the House and Senate sent letters to the EPA requesting that the agency provide an additional 30 days for public comments on the proposed rule to update the Risk Management Program (RMP).
- TFI had previously sent a letter to EPA making the same request for an extension to the comment period, and TFI filed official comments with EPA on May 13.
- The letters also raise concerns with the accelerated timeline of the proposed rule bringing into question the agency's consideration of public comments and recommendations from the required small business review panel.
- Finally, the letters raised concerns with the potential for conflict with or duplication of efforts by OSHA to update its PSM program. EPA has announced that it plans to issue a final rule for RMP by the end of 2016.



OSHA Exemption for Retail Facilities under PSM

TFI Meets with Assistant Secretary of Labor for Occupational Safety and Health

- Andy O'Hare participated in a meeting in early March with Dr. David Michaels, Assistant Secretary for Occupational Safety and Health (OSHA). Dr. Michaels shared information on OSHA developments, including an anticipated rule this summer to change the agency's penalty policy.

Dr. Michaels also explained the agency would soon begin a small business consultative process on potential changes to the Process Safety Management rule, though he noted the agency is years away from a proposed rule.

OSHA has set up the small business consultative process and TFI had a representative .



OSHA Exemption for Retail Facilities under PSM

Bi-partisan Letter Sent to House Appropriations Subcommittee Addressing the Process Safety Management Program

- On March 24, 2016, 41 members of the U.S. House of Representatives, led by Reps. Stephen Fincher (R-Tenn.), Kevin Cramer (R-N.D.), Colin Peterson (D-Minn.), and Brad Ashford (D-Neb.), sent a bi-partisan letter to House Labor, Health and Human Services, Education, and Related Agencies (LHHS) Appropriations Subcommittee Chairman Tom Cole (R-Okla.) and Ranking Member Rosa DeLauro (D-Conn.) requesting legislative language to address OSHA's July 22, 2015, memorandum revising the agency's 1992 interpretation of what constitutes a "retail facility" for coverage under the Process Safety Management (PSM) program. The letter, sent at TFI and other stakeholders' request, asks for the inclusion of statutory language in the FY2017 LHHS appropriations bill to prevent OSHA from implementing or enforcing the July 22 memo until the agency submits the rule change to a formal public notice and comment rulemaking.



OSHA Exemption for Retail Facilities under PSM

Bi-partisan Letter Sent to House Appropriations Subcommittee Addressing the Process Safety Management Program

- TFI also joined a broad coalition of agriculture organizations in sending letters to members of the House and Senate Appropriations Committees seeking legislative language to address the OSHA PSM retail exemption in the FY2017 LHHS appropriations bill.
- Additionally, the House and Senate LHHS Appropriations Subcommittees held hearings to examine the U.S. Department of Labor's budget request for FY2017. The OSHA PSM issue was raised with Labor Secretary Thomas Perez during both the House and Senate hearings. Notably, Sen. Roy Blunt (R-Mo.), chairman of the Senate LHHS Appropriations Subcommittee, informed the Secretary that Congress will continue to include language in the agency's annual appropriations bill until they submit the rule change for a formal public notice and comment rulemaking. Rep. Charlie Dent (R-Pa.) also urged the Secretary to submit the rule change for a formal public notice and comment rulemaking.



OSHA Exemption for Retail Facilities under PSM

OSHA Asks Congress Not to Intervene in PSM Retail Issue

- On May 6, the Occupational Safety and Health Administration's (OSHA) Administrator Dr. David Michaels sent a letter to all members of Congress regarding the agency's July 2015, memo that revoked a 20-plus year exemption for retail facilities under the Process Safety Management (PSM) program.
- The letter announces that while the agency plans to include both the retail exemption as well as the NAICS-based definition of a retail facility as part of OSHA's formal PSM rulemaking process, the July 2015 memo will remain in effect during the rulemaking process.
- The letter also asks Congress not to take any action that would limit the scope or applicability of the July 2015 memo. TFI remains concerned the agency is effectively finalizing a rule before going through the rulemaking. We will continue to encourage Congress to include language in the FY2017 Labor, Health, and Human Services appropriations bill to prevent OSHA from enforcing PSM at agricultural retail facilities until the agency withdraws the July memo and submits the rule for a proper public notice and comment rulemaking.



OSHA Exemption for Retail Facilities under PSM

52 Members of the House of Representatives Send Letter to OSHA Regarding PSM

- On May 26, 52 bi-partisan members of the U.S. House of Representatives sent a response letter to Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health (OSHA), expressing concern with several statements Michaels made in a letter to all members of Congress regarding OSHA's enforcement of the PSM program on 3,800 agricultural retailers.
- The letter reiterates their call to withdraw OSHA's July 2015 memo enforcing PSM and commence with a formal notice and comment rulemaking.



Updates to OSHA's Process Safety Management Implementation

Senate Appropriations Committee Approves FY2017 Labor HHS Appropriations Bill with Directive to Address OSHA PSM Rule

- On June 9, the Senate Appropriations Committee approved a bi-partisan FY2017 Labor, Health and Human Services and Related Agencies (LHHS) Appropriations bill by a vote of 29-1. The Committee Report includes language prohibiting the Occupational Safety and Health Administration (OSHA) from imposing the Process Safety Management regulations on agricultural retailers until the agency does the following:
 - OSHA arranges for an independent third party to conduct a cost analysis of the policy change
 - The Bureau of the Census establishes a code for farm supply retailers under sectors 44-45 (relating to retail trade) of the North American Industry Classification System (NAICS)
 - OSHA submits the policy change to formal notice and comment rulemaking.
- **While this is a positive development, the bill still has a long way to go.** In addition, the House has yet to consider its FY2017 LHHS Appropriations bill.



OSHA Exemption for Retail Facilities under PSM

Senate bill introduced to repeal revised PSM

- **Washington**—The Fertilizer Institute (TFI) on July 14 praised Sens. Deb Fischer (R-Neb.) and Heidi Heitkamp (DN. D.) for introducing the *Fertilizer Access and Responsible Management (FARM) Act*.
- The Senate bill would require the Occupational Safety and Health Administration (OSHA) to withdraw the process safety management (PSM) memorandum that it announced last summer that reinterpreted the PSM's retail exemption by much more narrowly defining the term "retail facility" as an establishment that sells chemicals only in "small packages, containers, or allotments."
- As a result, an estimated 3,800 anhydrous ammonia retailers who previously claimed the exemption will now be required to come into PSM compliance by Oct. 1, 2016. In addition to requiring OSHA to withdraw the revised PSM, the Senate bill also requires OSHA to follow the formal rulemaking process and allow impacted stakeholders the opportunity to provide input.



OSHA Exemption for Retail Facilities under PSM

Senate bill introduced to repeal revised PSM

- “The Fertilizer Institute applauds Senators Fischer and Heitkamp for their bipartisan action that could potentially positively impact 3,800 agricultural retail facilities that store or handle anhydrous ammonia,” said TFI President Chris Jahn. “It is important that we allow ag retailers and their farmer customers the opportunity to weigh in on regulations that directly impact their business.” The *FARM Act* was introduced in the U.S. House in May (*GM* May 20, p. 1).
- “OSHA has circumvented Congress and public input by introducing new rules that will make it harder for farmers to do their job,” said Sen. Fischer. “The bipartisan bill Senator Heitkamp and I are introducing today would protect farm families by rolling back OSHA’s unilateral decision to create harmful rules without following the law.”



OSHA Exemption for Retail Facilities under PSM

Senate bill introduced to repeal revised PSM

- OSHA's revised PSM was a response to President Obama's August 2013 executive order requiring federal agencies to address regulatory lapses in the wake of the deadly West Fertilizer Co. ammonium nitrate explosion in April 2013.
- OSHA labeled the change as "interpretative guidance," and argued that it was not required to conduct formal rulemaking as a result. "We've heard this burdensome standard will force more than a dozen North Dakota retailers to stop selling this critical fertilizer, severely hurting farmers across the state who will need to travel much longer distances to access fertilizer and incur higher costs," said Sen. Heitkamp. "Such sweeping and harmful actions need to be more thoroughly thought out before going into effect, and they must take into account the needs and impacts in each state."



PSM Litigation

- Update
- The DC Circuit court issued an order outlining a schedule for the development of briefs in the PSM litigation.
- In so doing, the court decided to bypass the motion to expedite consideration of the OSHA motion to dismiss the TFI and ARA legal challenge.
- Has been debated by the DCC Circuit in May, and awaiting the decision. The court is recessing for the summer, and a new panel will be appointed in December.





**Pipeline and Hazardous Materials
Safety Administration**

Pipeline and Hazardous Materials Safety Administration

Fertilizer Industry Meets with PHMSA and Capitol Hill Staff

- In early April, TFI and TFI member CF Industries held a series of meetings with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and key House and Senate staff to discuss confusion over jurisdictional overlap between the Occupational Safety and Health Administration (OSHA) and PHMSA over the labeling and placarding of bulk transport vessels.
- To clarify jurisdiction over the matter, TFI seeks to amend OSHA's 2015 enforcement document or to supersede the portions pertaining to transportation so that OSHA does not mandate labeling or placarding on bulk transport.
- This would mean that Hazard Communication Standard (HCS) labels and conveyance of such information to worksites be at the discretion of the shipper when in transport. PHMSA agrees it has primacy in this matter and also stated meetings on the topic are underway with OSHA.
- At the request of PHMSA, TFI will work with its members to identify ways that shippers can convey HCS information to workers at sites receiving shipments of hazardous materials. Hill staff held a conference call with PHMSA as an inquiry and to highlight the importance of DOT jurisdiction over labeling and placarding of bulk transportation.



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Process Safety Management Compliance Toolkit is Now Available from ResponsibleAg

- In March, ResponsibleAg announced the availability of two online tools:
 - [MyPSM+RMP Compliance Assistance Tool](#) and
 - [PSM Training Modules](#).
- These online materials will assist agricultural retailers in complying with the complex Process Safety Management (PSM) rule and the associated Risk Management Plan (RMP) Program Level 3 obligation.
- The training modules were developed by ResponsibleAg with assistance from Asmark Institute, TFI, and the Agricultural Retailers Association (ARA). The *MyPSM+RMP* compliance assistance tool was developed by Asmark Institute, TFI, and OSHA.

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