

AAPFCO Security Sub-Committee - Security Briefing - AAPFCO Winter Annual 2016  
February 23, 2016 Albuquerque, NM

### **Ammonium Nitrate Issues**

ResponsibleAg, Ammonium Nitrate Rule Discussed at Chemical Sector Coordinating Council Meeting on January 12, 2016

- ResponsibleAg, and its important role promoting safety and security in the agricultural retail sector, will be featured on panels at both summits this year.
- **DHS is revisiting the Ammonium Nitrate Security Program (ANSP).**
- **DHS also discussed the ANSP, and shared with the Chemical Sector Coordinating Council its desire to work with Congress and stakeholders to revisit the ANSP, citing its interest in having an independent agency to conduct a study of the issue.**

### **CSB releases report on the West, TX Incident**

Link for CSB Report: <https://app.box.com/s/nnu4d0tn0yoh9vpx8zbh4kj4gy88o98>

CSB Recommendations were submitted for the U.S. Environmental Protection Agency (EPA), U.S. Occupational Safety and Health Administration (OSHA), Department of Homeland Security, Federal Emergency Management Agency (FEMA) Texas Commission on Fire Protection (TCFP), State Firefighters' and Fire Marshals' Association of Texas (SFFMA), Texas A&M Engineering Extension Services (TEEX), CSB Recommendations -Texas Department of Insurance (TDI), and West Volunteer Fire Department (WVFD)

### **Update on Implementation of Executive Order 13650**

#### **DHS proposed revision of CFATS**

(DHS) has indicated the agency's intention to publish a Notice of Proposed Rulemaking this summer addressing the Chemical Facility Anti-Terrorism Standards (CFATS) program including an update to Appendix A which is the list of Chemicals of Interest.

TFI participated in a roundtable discussion hosted by the Department of Homeland Security in late October addressing the list of chemicals regulated by the Chemical Facility Anti-terrorism Standards (CFATS) program. The list, otherwise referred to as Appendix A, has not been modified since it was originally finalized in 2007. TFI took the opportunity to raise some specific concerns with how fertilizer chemicals are addressed. DHS plans to circulate a summary of the roundtable discussion in advance of proposing changes to the CFATS program, which are not expected until 2016.

#### **EPA - Risk Management Program (RMP)**

Last fall, EPA initiated a small business consultation process addressing potential changes to the EPA RMP. The objective of this endeavor was to hear directly from small businesses regarding the potential changes EPA is contemplating that could impact their businesses. EPA will then process the feedback

and make any necessary changes to a proposed rule they are planning to release later this year on the RMP for public comment.

#### **OSHA Exemption for Retail Facilities under PSM -29 CFR 1910.119**

**On July 22, the Occupational Health and Safety Administration (OSHA) issued a revised policy for retail facility exemption under the Process Safety Management (PSM) Standard.**

Under OSHA's old policy, "retail facilities were exempt from PSM coverage if it derived more than 50% of its income from direct sales of highly hazardous chemicals to the end user."

**The new policy states: "Only facilities, or the portions of the facilities, engaged in retail trade as defined by the current and any future updates to sectors 44 and 45 of the NAICS Manual may be afforded the retail exemption under 1910.119(a)(2)(i)."**

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy

#### **OSHA Extends PSM Enforcement Period for Retailers**

**In October, OSHA posted the memo extending the period when OSHA will exercise discretion and not enforce the PSM requirements at agricultural retail facilities. As indicated, the agency plans to extend the period of enforcement discretion by six months to July 22, 2016.**

**OSHA refers to the change as "interim."** TFI and ARA continue to press for additional time beyond July 22, 2016.

#### **Interim Enforcement Policy - December 23, 2015**

The July 22 Memorandum has, from its issuance, been subject to interim enforcement policies delaying active enforcement of the interpretation stated therein through July 22, 2016. This new policy rescinds all prior interim enforcement policies, including the PSM Retail Exemption Interim Enforcement Policy dated October 20, 2015, and replaces it with the following:

Through September 30, 2016, OSHA will not cite employers for violations of the PSM standard at facilities that it would not have cited applying the interpretation of the term "retail" that was in place prior to July 22, 2015.

#### **Congress Passes Omnibus Bill containing "Explanatory Statement" on Process Safety Management FY2016 Omnibus Appropriations Bill**

In December, the House and Senate voted to approve the FY2016 Omnibus Appropriations bill, which provides funding for the federal government through Sept. 30, 2016.

The Omnibus Appropriations bill contains language in the accompanying document known as the "Joint Explanatory Statement (JES)", which would preclude OSHA from enforcing the PSM standard through September 30, 2016 until

- 1) the Census Bureau develops a new North American Industry Classification System (NAICS) code for "farm supply retailers," and
- 2) OSHA conducts a formal notice and comment rule making to address the retail exclusion from the PSM standard.

TFI and ARA counsel have reached out to OSHA's counsel to determine how the agency plans to interpret the language.

Pursuant to language in the joint explanatory statement associated with the Omnibus Appropriations bill passed by Congress in December 2015, OSHA extended the period of enforcement discretion of the PSM standard at agricultural retailers through September 30, 2016.

OSHA, like EPA, plans to consult with small businesses on potential changes to the existing PSM program through a formal process to begin in the next few months

Additional details on OSHA's next steps, including what PSM program elements the agency is planning to reconsider, may be found here: <https://www.osha.gov/dsg/psm/index.html> .

A proposal from OSHA is not expected in 2016.

#### **PSM Litigation - December 15, 2015**

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.

The initial briefs are due to the court on January 22, 2016, with final briefs anticipated in late March 2016.