



MAY 06 2016

Dear Member of Congress,

I am writing to respond to concerns expressed regarding the Occupational Safety and Health Administration's (OSHA) July 2015 retail exemption interpretation and to update you on regulatory action OSHA is taking in this matter.

Incidents of catastrophic releases of chemicals have continued since the promulgation of the Process Safety Management (PSM) Standard in 1992, including numerous instances involving anhydrous ammonia in agricultural ammonia facilities. For example, EPA data show that in the period 2004-2013, there were well over 100 incidents involving over 80 worker and nine emergency responder injuries at agricultural ammonia facilities that were not covered by PSM due to the retail exemption interpretation. More recent PSM incidents include the West Fertilizer disaster in April 2013, and two other major chemical fires and explosions in June 2013, which together killed 18 and injured hundreds of workers, first responders, and residents.

Following the West Fertilizer disaster and these other incidents, the President issued Executive Order 13860 in August 2013. In addition to modernizing the 1992 Process Safety Management standard, the Executive Order also directed OSHA to identify changes that needed to be made to the retail exemption to enhance safety and security in chemical facilities. In December 2013, OSHA issued a Request for Information (RFI), which solicited public comment on a proposed revision to its interpretation of the retail exemption. OSHA responded to the comments received from the public and released a revised interpretation of the retail exemption in July 2015. The July 2015 memorandum interpreted the term "retail" consistent with both the intent described in the preamble to the PSM standard and the common definition of retail establishment used by the Department of Commerce. OSHA acknowledged that some time may be needed for newly-covered entities to come into compliance and issued a time limited non-enforcement policy. OSHA also focused resources in its state-run consultation program to assist small and medium sized businesses in meeting compliance.

With the full history of the July 2015 revision in mind, I am confident that the process used to develop this interpretation afforded stakeholders ample opportunity to participate and make their views known. Furthermore, we have learned that many agricultural distributors are completing the necessary safety management system upgrades. While some facilities require hardware upgrades, many will be able to comply with the standard through low-cost upgrades to their safety management systems.

While the process that OSHA used to define retail exemption was appropriate and the guidance was necessary, OSHA has begun the regulatory process to amend the PSM standard to define the

standard's retail exemption. This process began with the issuance of a background document to small employer representatives as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) process, which will include for comment the NAICS- based definition of retail announced in OSHA's July 2015 interpretive guidance. The July 2015 retail exemption memorandum will remain in effect (subject to the current enforcement delay through September 30, 2016) while OSHA proceeds with the PSM rulemaking.

OSHA's mission is to protect workers from workplace hazards and the purpose of the guidance document is to prevent future incidents involving catastrophic releases of hazardous chemicals, such as the explosion and fire at West Fertilizer. I am concerned that actions that may eliminate or weaken the protections afforded by implementation of the July 2015 guidance will continue to expose workers, first responders and residents to unnecessary and preventable risks. The interests of public safety and fairness are not served by continuing to deny workers and communities needed protections to avoid a catastrophe such as the one in West, Texas. Therefore, I request that you not take further action that would limit the scope or applicability of the guidance during such time as OSHA conducts rulemaking. Our communities, our workers, and our businesses deserve safety management systems that provide protection from preventable catastrophes.

Sincerely,



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