OSHA Seeks Comments on Proposed Changes to Process Safety Management Regulations

A federal working group responsible for improving chemical safety and security after the April 2013 explosion at a fertilizer distributor in West, Texas has articulated several proposed changes to OSHA’s process safety management (PSM) regulations as part of the increased scrutiny on chemical facilities. These tighter and more expansive regulations undoubtedly will gain even more support in the wake of the recent spill at Freedom Industries in West Virginia.

The working group was created when President Obama issued Executive Order No. 13650 in August 2013 after the West, Texas explosion. The president directed OSHA, EPA and DHS to improve operational coordination with state and local partners; enhance federal agency coordination and information sharing; modernize policies, regulations and standards; and work with stakeholders to identify best practices. The president also recommended that OSHA focus its efforts on revamping PSM and other chemical regulations immediately.

In December and January, the working group issued a request for information (RFI) seeking comments from stakeholders on the following regulatory changes it seems intent on adopting:

1. Clarifying the PSM Exemption for Atmospheric Storage Tanks – Under 29 CFR Section 1910.119(c)(1)(ii), the PSM standard applies to processes involving a flammable liquid on site in one location in a quantity of 10,000 pounds or more. However, there is an exemption for “[f]lammable liquids stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.” Following the decision in Secretary of Labor v. Meer Corporation (1997) (OSHRC Docket No. 95-0341), PSM coverage has not been extended to flammables stored in atmospheric tanks, even if the tanks are connected to a process. OSHA is looking to revise the PSM standard so that it applies to all stored flammables when connected to, or in close proximity to, a process.

2. Oil and Gas Well Drilling and Servicing – Section 1910.119 exempts oil and gas well drilling and servicing operations from PSM coverage. OSHA is looking to remove the exemption for oil and gas well drilling and servicing.

3. Oil and Gas Production Facilities – Although oil and gas production facilities are not exempt from the PSM standard, OSHA noted in its RFI that in practice, those facilities have been exempted from PSM enforcement. OSHA is looking to resume enforcement of oil and gas production facilities under the PSM standards.

4. Expanding PSM Coverage and Requirements for Reactivity Hazards – Under Section 1910.119(a) the PSM standard applies to any process that involves certain chemicals above specific threshold quantities, and certain flammable gases or liquids that involve a Category 1 flammable gas or flammable liquid with a flash point below 100º on site in one location in a quantity of 10,000 pounds, unless the process is covered by an exception. Appendix A lists 137 highly hazardous chemicals that present a potential for a catastrophic event at or above the listed threshold quantities, but does
not cover all highly reactive chemicals. OSHA is looking to add reactivity hazards to the standard, perhaps following the approach taken in the New Jersey Toxic Catastrophe Prevention Act.

5. **Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard** – The Appendix A list has remained unchanged since 1992. OSHA wants to add other chemicals to this list and establish a means to update the list as technology and advancements in science evolve.

6. **Revising the PSM Standard to Require Additional Management-System Elements** – OSHA is looking to incorporate additional management-system elements into the PSM standard based on work done by the Center for Chemical Process Safety (CCPS) and other safety organizations or agencies.

7. **Amending Paragraph (d) of the PSM Standard to Require Evaluation of Updates to Applicable RAGAGEP** – Section 1910.119(d)(3) requires employers to document that PSM-covered equipment complies with RAGAGEP. However, the standard does not require employers to evaluate updates to applicable RAGAGEP, or to examine new RAGAGEP after evaluating and documenting initial compliance. OSHA is looking to revise paragraph (d) to require that employers rely upon and comply with the most up-to-date RAGAGEP.

8. **Clarifying the PSM Standard by Adding a Definition for RAGAGEP** – RAGAGEP is mentioned throughout the PSM standard, but it is undefined and frequently subject to different interpretations. OSHA wants to include an explicit definition of RAGAGEP in the PSM standard, perhaps similar to the CCPS’s definition.

9. **Expanding the Scope of Paragraph (j) of the PSM Standard to Cover the Mechanical Integrity of Any Safety-Critical Equipment** – Section 1910.119(j) requires employers to implement mechanical integrity programs for pressure vessels and storage tanks; piping systems (including piping components such as valves); relief and vent systems and devices; emergency shutdown systems; controls (including monitoring devices and sensors, alarms and interlocks); and pumps.

Although safety-critical equipment is not mentioned specifically, OSHA has relied on the general duty clause in Section 5(a)(1) to cite employers who do not have satisfactory mechanical integrity programs for safety-critical equipment. OSHA is looking to update paragraph (j) to require mechanical integrity programs for safety-critical equipment as well.

10. **Clarifying Paragraph (l) of the PSM Standard With an Explicit Requirement That Employers Manage Organizational Changes** – Section 1910.119(l) requires employers to establish and implement written procedures to manage change, including all modifications to equipment, technology, procedures, raw materials and processing conditions other than replacements in kind. However, the standard does not explicitly require employers to follow management of change procedures for organizational changes, such as changes in management structure, budget cuts or personnel changes. OSHA is looking to revise the management of change requirements in paragraph (l) to address these issues as well.

11. **Revising Paragraph (n) of the PSM Standard to Require Coordination of Emergency Planning With Local Emergency Response Authorities** – Section 1910.119(n) requires employers to establish and implement an emergency action plan in accordance with OSHA’s Emergency Action Plan (EAP) standard and Hazardous Waste Operations and Emergency Response (HAZWOPER) standard. Although some OSHA standards require employers to coordinate emergency planning with local emergency response authorities, the existing PSM standard does not contain such a requirement. OSHA is looking to revise this paragraph to require facilities to coordinate emergency planning with local emergency response authorities and seeking comments on how this should be accomplished.

12. **Revising Paragraph (o) of the PSM Standard to Require Third-Party Compliance Audits** – Section 1910.119(o) requires employers to audit their PSM program for compliance every three years and specifies that the audits be conducted by at least one person knowledgeable in the process. This
paragraph does not require employers to use a third party in conducting the compliance audits. OSHA is looking to revise paragraph (o) to require employers to use a qualified third party for compliance audits. It also is looking to increase the required frequency for these audits and the timeframe for responding to any deficiencies found during the audits.

13. **Expanding the Requirements of Section 1910.109 to Cover Dismantling and Disposal of Explosives, Blasting Agents and Pyrotechnics** – Section 1910.119(k)(1) provides that the standard applies to “the manufacture, keeping, having, storage, sale, transportation, and use of explosives, blasting agents and pyrotechnics,” and does not apply to the sale and use of fireworks or the use of explosives. Dismantling and disposal of explosives also are not covered by the standard. OSHA is looking to expand this section to address hazards associated with the dismantling and disposal of explosives.


15. **Updating the Regulations Addressing the Storage, Handling and Management of Ammonium Nitrate** – OSHA’s requirements for the storage of ammonium nitrate and fertilizer are found in Section 1910.109 and are based on a 1970 NFPA consensus standard. OSHA intends to expand this standard and is requesting comments on safe work practices for storing, handling and managing ammonium nitrate and on how to update regulatory requirements.

16. **Changing Enforcement Policy of the PSM Exemption for Retail Facilities** – Section 1910.119(a)(2)(i) of the PSM standard contains an exemption from coverage for retail facilities. OSHA noted in the RFI that this exemption came about because the container, package or allotment sizes of chemicals typically found at these facilities did not pose the same safety hazards as those at establishments working with large, bulk quantities and materials. OSHA is looking to limit the exemption and seeking comments on whether its current enforcement policy adequately addresses workplace hazards at these facilities.

17. **Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard Without Specific Concentrations** – Appendix A of the PSM standard lists highly hazardous chemicals and threshold quantities that must be met to establish PSM coverage. Although Appendix A provides specific concentrations for 11 of its listed chemicals, the standard is silent on concentrations for the remaining 126 listed chemicals. OSHA wants to spell out specific concentrations for all chemicals governed by the standard and is considering the approach used by the EPA under its Risk Management Program. If OSHA adopts this policy, it would consider a PSM-listed chemical in a mixture to be covered if the concentration of the chemical were greater than 1 percent and the calculated weight of the chemical in the mixture were greater than the threshold quantity.

OSHA is giving stakeholders until March 31, 2014 to provide information on the proposed regulatory changes. It has posted questions in the RFI that it would like stakeholders to answer with respect to each change. Comments can be submitted to the federal government’s e-rulemaking portal at [http://www.regulations.gov](http://www.regulations.gov), and the docket can be accessed at that portal under Docket No. OSHA-2013-0026. Although any new regulations are many months, if not years, away, given the proposed regulatory changes, recent catastrophic events and National Emphasis Program for Chemical Facilities, now, more than ever, companies must commit to PSM compliance.

**FOR MORE INFORMATION**

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