

November 14, 2022

U.S. Department of Labor
Occupational Safety and Health Administration
OSHA Docket Office, Room N-2625
200 Constitution Avenue, NW
Washington, D.C. 20210

RE: OSHA Process Safety Management Standard, Request for Comments; Docket ID # OSHA-2013-0020

Dear Deputy Assistant Secretary of Labor James Frederick,

The Agricultural Retailers Association (ARA) is submitting comments on the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) request for comments on the Process Safety Management (PSM) regulations.

Statement of Interest

ARA is a 501(c)(6) non-profit trade association that represents the interests of agricultural retailers and distributors across the United States on legislative and regulatory issues. As the political voice for agricultural retailers and distributors, ARA advocates on critical issues, educates legislators and collaborates with regulatory officials on critical issues affecting the industry. Ag retailers supply farmers and ranchers with products and services. These products include seed, nutrients, crop protection products, feed, equipment, and technology.

Retailers also provide consultative services such as crop scouting, soil testing, field mapping, custom planting and application and development of nutrient management and conservation plans. Certified Crop Advisers (CCAs) and Pest Control Advisers (PCAs) are often retained on the retailer's staff to provide professional guidance and crop input recommendations to farmers and consumers.

Agricultural retailers range in size from small, family-held businesses to large companies and farmer-owned cooperatives with many outlet stores. Large and small retail facilities are scattered throughout all fifty states and provide critical goods and services, as well as jobs and economic opportunities in rural and suburban communities.

Comments

Agricultural retailers play an important role feeding the world and provide farmers with essential crop input products like seed, fertilizer, pesticides, and other essential products and services. Our

members are a cooperating partner in the regulated community and understand the importance of chemical safety and security.

ARA appreciates the opportunity to provide suggestions and solutions to OSHA to prevent future incidents from taking place like the April 17, 2013, tragedy at the fertilizer facility in West, Texas. Our industry fully understands and appreciates the importance of chemical safety and security and is a cooperating partner with federal and state agencies to ensure compliance with existing regulations. ARA members communicate and engage with employees, local first responders, and the community to enhance Environmental, Health, Safety and Security (EHS&S) matters. They regularly train their employees on the core EHS matters.

ResponsibleAg Inc. (www.responsibleag.org/) is a non-profit organization founded in 2014 to promote the public welfare by assisting agribusinesses as they seek to comply with federal environmental, health, safety and security rules regarding the safe handling and storage of fertilizer products. The organization provides participating businesses a federal regulatory compliance audit relating to the safe storage and handling of fertilizers, recommendations for corrective action where needed and a robust suite of resources to assist in this regard.

The fertilizer industry is building upon its corporate social responsibility by promoting safe storage and handling practices. Our goal: Improving safety and security associated with storage and handling of fertilizer products, supporting compliance with federal regulations, demonstrating accountability and transparency, and providing for the safety of employees, customers and communities-while continuing to serve the vital need of the agricultural community for crop nutrients.

Any business that stores or handles fertilizer products is eligible to participate in the ResponsibleAg Certification Program. The focus of the program for the first three years will be on companies that store and handle ammonium nitrate fertilizer and/or anhydrous ammonia fertilizer. Approximately 9,000 facilities are estimated to be eligible to participate in ResponsibleAg in the U.S. Of these, over 3,000 handle ammonium nitrate fertilizers and/or anhydrous ammonia fertilizer. These 3,000 facilities are the initial focus for the ResponsibleAg audit program.

ResponsibleAg has compiled a checklist of federal regulatory requirements applicable to the storage and handling of fertilizer products. The checklist, developed by a technical committee comprised of industry regulatory professionals, contains more than 320 questions. Auditors credentialed under the ResponsibleAg Certification Program¹ will use this checklist to audit the level of compliance at each participating facility. The program has a Top 25 list² of common issues for Ag retail facilities, which does not include any of the OSHA related concerns related to the storage and handling of anhydrous ammonia or fertilizer grade ammonium nitrate (FGAN).

The scope of the audit is determined by the participating facility. All participants are required to have a base audit for the storage and handling of fertilizer products. A participating facility can choose to

¹ <https://www.responsibleag.org/CredentialingApplication/>

² <https://www.responsibleag.org/>

add supplemental areas. For example, if a facility also handles agricultural chemicals, it can add a supplement to the base audit that would cover the storage and handling of these products as well.

Participating facilities will receive an audit by a credentialed ResponsibleAg auditor once every three years. Up to seventeen areas of a facility are assessed by the auditor. (Examples of these areas are dry fertilizer, liquid fertilizer, anhydrous ammonia (NH₃), shop, office, and grounds, etc.) The auditor will enter their findings into the secure portal on the ResponsibleAg website within 24 hours of completing the audit. After it is entered, the facility will receive (if applicable), a corrective action plan listing any issues that were discovered by the auditor.

Compliance education is a key component of ResponsibleAg's mission. If the auditor identifies compliance issues, the facility will receive a corrective action plan listing those issues, information on how to correct them and a recommended time frame for corrections. Certification may not be obtained until all outstanding issues are addressed.

In addition, TFI and ARA also develop AN Fertilizer Safety and Security Guidelines for the industry. These resources along with others are linked on OSHA's website under Fertilizer Industry Guidance on Storage and Use of AN and Anhydrous Ammonia. ARA is part of an OSHA Fertilizer Alliance with TFI with the goal to foster safety and health practices and programs to improve workplace safety. OSHA also has a dedicated webpage entitled "Fertilizer Industry Guidance on Storage and Use of Ammonium Nitrate and Agricultural Anhydrous Ammonia" that ARA shares with its members³.

OSHA's PSM, which contains requirements for preventing or minimizing toxic, fire, and explosion hazards associated with catastrophic releases of toxic, reactive, flammable, or explosive chemicals, does not apply to "retail facilities." 29 CFR 1910.119(a)(2)(i). As stated by the OSHA Enforcement Memorandum issued on April 30, 2018, "OSHA expects employers in these industries to continue to comply with other applicable OSHA standards, including 29 CFR 1910.109(i) (storage of ammonium nitrate), 29 CFR 1910.111 (storage and handling of anhydrous ammonia), 29 CFR 1910.120 (hazardous waste operations and emergency response), and 29 CFR 1910.1200 (hazard communication). These standards are valuable agency tools to ensure the safety of workers in these industries. OSHA standard 1910.111 addresses similar types of ammonia hazards as the PSM standard. OSHA will seek to maximize compliance among the covered employers through strong enforcement⁴."

ARA opposes the addition of agricultural retailers to PSM. PSM is intended for large manufacturing facilities where there is a chemical manufacturing process in changing / altering the chemicals. ARA supports maintaining the existing retail facilities definition. West Fertilizer was a tragic event. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) indicated the West Fertilizer explosion was caused by an intentional, criminal act by an individual using an incendiary device.⁵ According to

³ <https://www.osha.gov/fertilizer-industry>

⁴ <https://www.osha.gov/laws-regs/standardinterpretations/2018-04-30>

⁵ <https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire>

the ATF, “After more than 400 interviews, a systematic fire-scene examination, the review of witness photos, videos and observations, as well as extensive scientific testing at the ATF Fire Research Lab in Beltsville, Maryland, the fire has been ruled “incendiary,” or intentionally set. All viable accidental and natural fire scenarios were hypothesized, tested, and eliminated.”⁶ To our knowledge, there was no release of anhydrous ammonia from the storage tanks following the explosion. The tanks worked as intended.

Agricultural retailers receive anhydrous ammonia from the wholesaler, store the product in storage tank or tanks (bullet tank), and sale the anhydrous ammonia in smaller quantities to end users, farmers. There is no chemical process involved in the sale of anhydrous ammonia as a fertilizer. The anhydrous ammonia that comes to the agricultural retailer is sold to the farmer without a change of chemical makeup of that anhydrous ammonia.

The addition of agricultural retailers to PSM would have adverse effects on safety. This regulation would result in ag retailers either consolidating anhydrous ammonia facilities and/or getting out of the anhydrous ammonia business altogether. Because anhydrous ammonia will be available at fewer locations, farmers will have to drive further distances to purchase the product, increasing the amount of time and distance this hazardous chemical is on the roadway, and/or farmers will begin to store the product on the farm because OSHA regulations do not regulate farming operations. Farmers are also not regulated under EPA’s RMP requirements.

ARA opposes any OSHA mandate that would require facilities substitute products for “safety alternative chemicals.” Ammonia is a basic building block for the manufacture of nitrogen fertilizer products. There are no safer alternatives to replace this product so even being required to conduct a Safer Technology and Alternatives Analysis (STAA) makes no sense. Anti-chemical groups contend that the option could be used to replace, or in the environmental context supplement, existing PSM and RMP safety requirements with a system that requires employers to present to regulators a structured argument, supported by a body of evidence, that provides a compelling, comprehensible, and valid case that a system is safe for a given application in each operating environment. However, ARA and other impacted industry segments believe regulations should be straight forward and easy to understand. The current federal regulatory scheme is already complex. Changing the regulatory structure utilizing a “safety case” model will create additional confusion and do little to improve safety.

Conclusion

OSHA needs to focus on enforcement of existing regulations and increase compliance assistance. If the agency deems there are continuous safety related issues, ARA recommends more targeted ways that will address any known issues with the current storage and handling requirements for anhydrous ammonia (1910.111) and ammonium nitrate (1910.109i). This should be done through a formal rulemaking process that aligns with industry consensus standards and practices. However, OSHA’s own enforcement data for NAICS Code 424910, Farm Supplies Merchant Wholesalers, listing the

⁶ Id.

standards cited by Federal OSHA with all sizes of employees during the period of October 2021 through September 2022 does not show any citations related to 1910.111 or 1910.109(i).⁷ OSHA did issue 2 citations related to the Hazard Communication regulations (1910.120) with total penalties of \$1,865. These facilities are also already being heavily regulated under the agency's Regional Emphasis Program (REP)⁸. ARA concurs with the comments and concerns provided by the Kansas Agribusiness Retailers Association (KARA) regarding OSHA Region 7 REP as well as the other points raised in KARA's comment letter.

Thank you for your review and consideration of our comments!

Best regards,



Richard D. Gupton
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⁷ https://www.osha.gov/ords/imis/citedstandard.naics?p_esize=&p_state=FED:ederal&p_naics=424910

⁸ <https://www.osha.gov/enforcement/directives/cpl-02-19-01a>