



August 12, 2016

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

RE: OSHA's Proposed Revisions to 29 CFR § 1910.119 Process Safety Management and 29 CFR § 1910.109 Explosives and Blasting Agents; OSHA-2013-0020

Dear Assistant Secretary Michaels,

The National Association of State Departments of Agriculture appreciates the opportunity to submit the following comments on the Occupational Safety and Health Administration (OSHA) Process Safety Management Small Entity Representative background document (SER document). NASDA's comments focus specifically on anhydrous ammonia and the PSM Retail Facility Exemption.

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease and fertilizer regulation. In forty-five states, the state department of agriculture is responsible for regulating the labeling, sale, and use of fertilizer products.

On July 22, 2015 OSHA issued an enforcement memo titled "Process Safety Management of Highly Hazardous Chemicals and Application of the Retail Exemption" which completely altered enforcement of the retail exemption. Prior to this change, any facility with highly hazardous chemicals that derived more than 50 percent of its income from direct sales was exempt from PSM standards. As a result of the change, nearly all small facilities that store anhydrous ammonia will be subject to rigorous safety standards designed for large operations, like petroleum refineries, rather than realistically achievable standards

NASDA is concerned this change will dramatically impact agricultural producers and small, rural anhydrous ammonia retailers. During a time of low commodity prices and increased input costs, the policy could increase the price of anhydrous ammonia and decrease its availability, without improving safety. OSHA estimates cost of implementation will be \$2160 per facility. However, industry estimates range from \$20,000 to \$100,000. As facilities, particularly small businesses, work to implement this rule, they will be forced to charge more or cease selling anhydrous ammonia. This will increase costs to

producers and decrease the availability of anhydrous ammonia. Further, OSHA links the need to make this change to the West, Texas explosion. However, ammonium nitrate, not anhydrous ammonia was the chemical present in that explosion. Despite OSHA's claims to the contrary, this proposal will not result in actual safety improvements.

Additionally, there are insufficient resources to implement this rule. OSHA has a limited number of inspectors across the country and states do not have the financial resources to expand their inspection programs. Moreover, due to the stringent standards and technical nature of PSM level two, companies need specialists on staff to come into compliance, specialists who are widely unavailable. Additionally, OSHA has failed to answer specific implementation questions from industry stakeholders and has not developed any guidance documents, increasing uncertainty surrounding implementation.

While NASDA appreciates this comment period, the impact of the PSM enforcement change warrants a formal rulemaking and comment period. With a rulemaking, OSHA will need to conduct an accurate economic impact assessment and provide an adequate amount of time for implementation. Without a rulemaking, OSHA is forcing uncertainty on agricultural producers and anhydrous retailers as the October 1, 2016 enforcement date approaches.

NASDA has met face-to-face with OSHA officials to explain the impact of this rule. NASDA members across the country have met with producers and retailers to hear about the negative changes facing the industry. OSHA officials attended one of these sessions. NASDA strongly urges changes to the enforcement of PSM standards on anhydrous ammonia distributors. We believe these changes should come through withdrawal of the July 22, 2015 enforcement memo. We encourage OSHA to continue working with NASDA and other impacted stakeholders. Please contact Britt Aasmundstad (britt@nasda.org) if you have any questions or would like any additional information at this time.

Sincerely,



Nathan Bowen
Director, Public Policy
NASDA