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## Minnesota Crop Production Retailers

# REGULETTER

### PSM: To be, or not to be

In Shakespeare's play, a despondent Hamlet bemoans the pains and unfairness of life but acknowledges the alternative might still be worse. Like Hamlet, PSM is a complicated topic both in content and politics. Based on everything we are aware of on the subject of PSM, it's not going away.

Industry efforts have been successful in obtaining more time for implementation with the latest announcement released from OSHA on December 23rd. This latest extension comes as a direct result of language that was included in the 2016 Omnibus Appropriations Bill Joint Explanatory Report advising OSHA to go through a formal notice and comment rulemaking process. While the language doesn't carry the weight of law, OSHA did move to align an additional two-month extension with the appropriations bill. The bill is only effective through September 30, 2016, the end of the Federal fiscal year and thus, OSHA has been asked to refrain from implementing the retail facility interpretation change until then.

Asmark continues to recommend to their clients to use this extra time wisely (upgrading their installations, lining up contractors, etc.) to move forward in developing their PSM programs with the goal of substantial compliance by July 22, 2016. This includes the upgrade and preparation of the RMP Program 3 submissions. Retailers have become accustomed to a June anniversary date for their RMP, considering the seasons and time requirements for preparation. Based on Asmark's experience, they recommend adopting the July 22, 2016 as the new date in association with the PSM requirements. Asmark Institute does have a free version of the MyPSM+RMP available for use. For

more information on this tool go to the Asmark Institute's homepage ([www.asmark.org](http://www.asmark.org)) and click on the bright yellow and red MyPSM+RMP logo.

Asmark Institute also recently announced a new service to help retailers who aren't clients of the Asmark Institute comply with the PSM requirement to have a Piping & Instrumentation Diagram (P&ID) for their installation.

The availability of providers to draw the P&IDs is very limited for several reasons. The Asmark Institute is offering this special service as a national resource center to assist all retailers in developing their Process Safety Management (PSM) program. A P&ID is a diagram (not a site plan) that visually represents the equipment and piping present in an installation identified as a PSM-regulated process. Graphic symbols are used to denote the appropriate equipment and piping. The P&ID is one of the first elements of your process safety information that should be completed, as it plays an integral part in developing other requirements of PSM such as Mechanical Integrity, Process Hazard Analysis and the Operating Procedures.

#### How can we help?

The Asmark Institute will soon launch a professional service that creates a detailed and accurate:

- P&ID (Includes a Key and Schedule)
- Block Flow Diagram

#### How does it work?

1. Take pictures of your installation following the instructions carefully. 2. Upload your pictures for one location at a time. 3. Asmark will draw the draft version of your P&ID and Block Flow Diagram and send you a proof to review and approve. 4. Proof your diagrams

and send any revisions that are necessary.

5. Asmark will make the revisions as appropriate and send you the final diagrams. This new service is available via the Compass section of the Asmark Institute website. Go to: [www.asmark.org/Compass](http://www.asmark.org/Compass).

This service is offered at Asmark's cost. Asmark has heard some rather excessive costs for drawing these diagrams. The new materials are supported by both EPA and OSHA for use at agricultural retailers.

MCPR will be offering a webinar on February 23rd on the free online tool Asmark has created for the industry! Please see the flyer and registration form enclosed in this newsletter. (Asmark Institute/MCPR)

### DOT Revises Physical Report and Card

DOT announced a 120-day grace period during which Medical Examiners may use either the current or the newly revised versions of the Medical Examination Report Form and Medical Examiner's Certificate. This period is from December 22, 2015, until April 20, 2016, due to a problem DOT encountered in adhering to their own schedule. There has been some confusion so it's finally official – the old AND new forms and cards can be used until April 20, 2016. (Asmark Institute)

### Preventive Controls for Animal Food Rule Finalized

The Food Safety Modernization Act (FSMA) Preventive Controls for Animal Food rule is now final. In this rule, the US Food and Drug Administration (FDA) has established Current Good Manufacturing Practices (CGMP) for animal food production to specifically address

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the manufacturing, processing, packing and holding of food for animals. These requirements apply to facilities that manufacture, process, pack or hold food for animal consumption in the United States.

There are requirements for animal food facilities to establish and implement hazard analysis and risk-based preventive controls. Examples include requirements to maintain a food safety plan, perform a hazard analysis and institute preventive controls for mitigating hazards. Facilities must also document how they monitor their controls, conduct verification activities and take appropriate corrective actions.

These preventive controls provide assurances that hazards will be significantly minimized or prevented and the animal food will not be adulterated. Every facility that produces animal food with a hazard requiring a preventive control must have a recall plan.

The rule has several exemptions including facilities that are solely engaged in the storage of raw agricultural commodities (other than fruits and vegetables) intended for further distribution or processing.

Facilities have different dates for compliance based on business size, with the earliest compliance dates beginning in September 2016 for businesses other than small and very small. For details on the compliance dates or more information including guidance, fact sheets and frequently asked questions, visit: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm366510.htm>. To view the complete publication of the final rule in the Federal Register, visit: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-17/pdf/2015-21921.pdf>. (Asmark Institute)

## Regulatory Agendas Announced: RMP, PSM, Etc.

The Office of Management and Budget (OMB) recently released the Fall 2015 Unified Regulatory Agenda. The Regulatory Agenda provides a road map for agency rulemaking activities. While there are many regulations in development, a few of note are listed below:

### Environmental Protection Agency (EPA):

In the regulatory agenda, EPA anticipates proposing a rule to revise the Risk Management Program regulations by December 2015; however EPA is still working through the small business panel process on

the rule, so it is anticipated the proposed rule will be published sometime in 2016.

### Department of Labor (DOL):

For proposed rule making changes to the Process Safety Management Standard, OSHA anticipates completing the Small Business Panel by April 2016, with a proposed rule to follow. OSHA plans to finalize its rule to improve tracking of workplace injuries and illnesses, which may lead OSHA to post individual company injury and illness data online by March 2016. (Asmark Institute)

## FMCSA Lowers Random Drug Testing Rate for 2016

DOT recently announced that it will lower the random testing rate for controlled substances from the current 50 percent to 25 percent for the upcoming calendar year, effective January 1, 2016. DOT routinely conducts a random survey to ensure compliance with the set testing rates, known as the Management Information System (MIS) or MIS survey. According to federal regulations, when the data received in the MIS for two consecutive calendar years indicates that the positive rate for controlled substances is less than one percent, the Administrator has the discretion to lower the minimum annual testing rate. While the MIS survey resulted in a positive rate of less than one percent for the 2011 and 2012 testing years, the Administrator chose to maintain the 50 percent rate for another year. The 2013 testing year also showed a positive rate of less than one percent, so after three years, the Administrator approved a lower testing rate. If at any time the positive rate for controlled substances exceeds one percent, the testing rate will revert back to 50 percent. (Asmark Institute)

## IRS Lowers Standard Mileage Rates for 2016

The IRS announced that for business use of a car, van, pickup truck or panel truck, the rate for 2016 will be 54 cents per mile, compared with 57.5 cents in 2015. Taxpayers can use the optional standard mileage rates to calculate the deductible costs of operating an automobile. Driving for medical or moving purposes may be deducted at 19 cents per mile, which is four cents lower than for 2015. The rate for service to a charitable organization is unchanged, set by statute (Sec. 170(i)) at 14 cents a mile. The portion of the business standard mileage rate that is treated as depreciation will be 24 cents per mile for 2016, the same as 2015. (Asmark Institute)

## Drone Owners Must Register Equipment with FAA

If you own a drone, you must now register it with the Federal Aviation Administration's Unmanned Aircraft System (UAS) registry. A federal law effective December 21, 2015 requires unmanned aircraft registration, and you are subject to civil and criminal penalties if you do not register. Visit: <https://www.faa.gov/uas/registration/> to access the FAA Registration website. (Asmark Institute)

## EPA Launches Pesticide Worker Protection Dashboard

EPA has launched a new Pesticide Worker Protection Dashboard as part of an overall effort to increase protection for farm workers who frequently work with pesticides. This new tool provides charts and graphs presenting key enforcement and compliance information related to the Worker Protection Standard (WPS) program.

The WPS dashboard presents information on the regulated community and answers questions like:

- How many facilities in the U.S. employ workers or handlers covered by the WPS?
- How many inspections are reported?
- How many violations have been found, and what enforcement actions have been taken by states, tribes and/or EPA?

This information will help allow the public and regulators to monitor the types of worker protection violations found in their state and in adjoining states so that they can adjust compliance assistance and education efforts or target inspections to increase compliance. Greater compliance means better protection for agricultural workers and fewer pesticide exposure incidents among farm workers and their family members. That means a healthier workforce, reductions in lost wages and medical bills and fewer absences from work and school. The public will be able to see the number of operations and workers covered by the WPS, and see the types and numbers of responses by the state, territory, tribe or EPA. Visit: [http://echo.epa.gov/trends/comparative-maps-dashboards/state-pest-dashboard?state&cm\\_mid=5268440&cm\\_crmid=ecbce7bf-3828-dc11-94a3-0014221ff69e&cm\\_medium=email](http://echo.epa.gov/trends/comparative-maps-dashboards/state-pest-dashboard?state&cm_mid=5268440&cm_crmid=ecbce7bf-3828-dc11-94a3-0014221ff69e&cm_medium=email) to view the new dashboard. (Asmark Institute)

