



This information is believed to be reliable by MCP R. However, because of constantly changing government regulations, interpretations and applicability or the possibility of human, mechanical or computer error, MCP R does not guarantee the information as suitable for any particular purpose.



Minnesota Crop Production Retailers

REGULETTER

ATF Reports West Fertilizer Was a Criminal Act

More than three years after the West, Texas tragedy, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Texas State Fire Marshal's Office called a press conference and announced the origin and cause of the plant fire and explosion at West Fertilizer. ATF has determined that the fire started in the seed warehouse that was connected to the fertilizer storage building and the cause of the fire has been determined to have been a criminal act. The criminal act is still under investigation with ATF issuing a \$50,000 reward for information leading to an arrest. (Asmark Institute)

PSM Lawsuit Update: Just Tell Us Yes or No

Did OSHA overstep their authority on July 22, 2015 when they rescinded the letter of interpretation that originally granted the "retail exemption" to our industry? ARA and TFI have petitioned the court to dispense with oral arguments asking simply for a "yes" or "no" opinion to this question. We were looking to this decision as a key indicator of the future of PSM until OSHA's Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels sent a letter to every member of Congress on May 6th. In the letter, OSHA appears to be doubling-down on their position as he advises members that the agency has already begun amending the PSM Standard to define the retail exemption. He is asking them to "not take further action that would limit the scope or applicability of the guidance during such time as OSHA conducts rulemaking." The letter also indicates the agency plans to begin enforcement of PSM on October 1, 2016. (Asmark Institute)

OSHA's Letter Sparks Controversy

Given the close timeframe of the ATF announcement and the letter to Congress by Dr. Michaels, industry has pushed back with a new fervor wanting to know how PSM came to be when anhydrous ammonia was not involved in the West, Texas tragedy - and now reportedly a criminal act and not the potential safety incident scenario. Also at issue is OSHA's intention to begin enforcement on October 1st despite their plan to complete rulemaking sometime within five years. Add the "wildcard" of being an election year - with special emphasis on "wild" this year, and the future of this issue becomes exponentially harder to predict the outcome. (Asmark Institute)

Heads Up! New Medical Certification Forms Were Required Starting April 20th

As of Wednesday, April 20th, all Certified Medical Examiners were required to use new medical certification forms for drivers of commercial motor vehicles. The new forms are part of the DOT's final rule on medical certification. In the new form, the FMCSA expanded the medical history criteria and incorporated those criteria into the regulations. The new form has 32 health conditions listed under the medical history portion of the rule. Of those conditions, 13 are new to the form. The revision also modified the duration of the medical history from five years to lifetime. Be sure your Medical Examiner is using the new form for your truck drivers. (Asmark Institute)

WhatsUpStream.com

Campaign EPA Administrator Gina McCarthy, testifying before the Senate Environment & Public Works Committee, said she and the agency were "distressed about the use of the money and the tone of the campaign," and that the agency has cut off funding to the

group. EPA's Inspector General announced there will be an investigation of the spending. EPA funded an anti-agriculture billboard campaign in Washington State urging state voters to contact their lawmakers to ensure the agriculture industry is held to the same standards as other industries when it comes to runoff and river pollution. (Asmark Institute)

Waters of the U.S. (WOTUS) Update

Agriculture and other industry interests opposed to EPA's controversial "waters of the U.S." rulemaking were disappointed recently when the 6th Circuit Court of Appeals refused to reconsider its decision on its jurisdiction over the rulemaking. The agricultural industry wanted the case heard by the federal district courts, leaving the appeals court as second resort in the challenge. The appeals court earlier blocked implementation as various state and industry court actions work their way through the system. (Asmark Institute)

Repeal of Manual Rope Pull Manlift Rule Posted in Minnesota State Register

For several years now, the Minnesota Grain and Feed Association has been pressing Minnesota OSHA to repeal portions of a Minnesota rule that included unrealistic requirements on the operation of manual rope pull manlifts. The main focus recently centered on allowing for the continued operation of a manual rope pull manlift using one suspension cable, versus being forced by OSHA to install (retrofit) an additional unnecessary and costly second suspension cable according to this Minnesota Rule. In a recent meeting with Minnesota OSHA staff and feeling the legislative pressure was mounting, Minnesota OSHA not only agreed to voluntarily repeal the section dealing with

(continued on back)

a requirement to have two suspension cables, but went further to suggest a desire to repeal the entire Minnesota Rule that covers manual rope pull manlifts. From OSHA's perspective, the rule is complex and required "all" OSHA personnel to be trained in the Rule, even though it was not widely used or enforced by OSHA field personnel. With limited resources and a change in priorities, OSHA was willing to repeal this Rule and leave manlift safe operation and maintenance to the employer. You could still be cited for obvious violations, but the inspection would no longer be done using the current overbearing, confusing and complex regulation. (MCPR/MGFA)

Fertilizer Industry Meets with PHMSA on Hazard Communication Standard

The Fertilizer Institute (TFI) has held a series of meetings with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and key House and Senate staff to discuss confusion over jurisdictional overlap between OSHA and PHMSA over the labeling and placarding of bulk transport vessels. To clarify jurisdiction over the matter, TFI seeks to amend OSHA's 2015 enforcement document or to supersede the portions pertaining to transportation so that OSHA does not mandate labeling or placarding on bulk transport. This would mean that Hazard Communication Standard labels and conveyance of such information to worksites be at the discretion of the shipper when in transport. PHMSA agrees it has primacy in this matter and also stated meetings on the topic are underway with OSHA. (Asmark Institute)

PHMSA New Reverse Logistics Rule

Retailers returning hazardous materials to manufacturers will be seeing new requirements for complying with the return process. The Pipeline and Hazardous Materials Safety Administration (PHMSA) says it will soon be adopting regulatory amendments pertaining to the reverse logistics shipments of certain hazardous materials from a retailer back to a distribution facility. The new final rule (identified as docket HM-253) will revise the Hazardous Materials Regulations (HMR) to include a definition of reverse logistics, and will also provide requirements and exceptions for hazardous materials that fall within the scope of the definition. HM-253 will create a new section in the HMR with specific requirements applying to reverse logistics shipments (return shipments from retail stores to a product's manufacturer, supplier or distribution facility) by highway transportation. The agency says the

new requirements will benefit retail operators by establishing a regulatory framework targeted at a distinct and limited segment of the supply chain that is associated with retail stores. The new definition of "reverse logistics" means the process of offering for transport or transporting by motor vehicle goods from a retail store for return to its manufacturer, supplier or distribution facility, for the purpose of capturing value (e.g., to receive manufacturer's credit), recall, replacement, recycling or similar reason.

Changes will apply to certain consumer products found in a number of hazard classes and divisions. They include:

- Class 3 (flammable);
- Class 8 (corrosive);
- Class 9 (miscellaneous), except lithium batteries;
- Division 1.4S (explosive);
- Division 2.1 (flammable gas);
- Division 2.2 (non-flammable gas);
- Division 4.1 (flammable solid), excluding self-reactive materials;
- Division 5.1 (oxidizer); and
- Division 6.1 (poison), excluding poison inhalation materials. (Asmark Institute)

OSHA Final Rule Mandates Electronic Reporting of Injuries/Illnesses

Under the new rule, all establishments with 250 or more employees in industries covered by the recordkeeping regulation must electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A, and 301. Establishments with 20-249 employees in certain industries must electronically submit information from OSHA Form 300A only. The new requirements take effect August 10, 2016, with phased in data submissions beginning in 2017. These requirements do not add to or change an employer's obligation to complete and retain injury and illness records under the Recording and Reporting Occupational Injuries and Illnesses regulation. For more information, visit OSHA's webpage on the final rule, which includes links to a fact sheet and frequently asked questions. "Since high injury rates are a sign of poor management, no employer wants to be seen publicly as operating a dangerous workplace," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Our new reporting requirements will 'nudge' employers to prevent worker injuries and illnesses to demonstrate to investors, job seekers, customers and the public that they operate safe and well-managed facilities. Access to injury data will also help OSHA better target our compliance assistance

and enforcement resources at establishments where workers are at greatest risk, and enable 'big data' researchers to apply their skills to making workplaces safer." (Asmark Institute)

Unified Registration System Enters Second Phase: September 30, 2016

Beginning September 30th, DOT will require trucking companies to use the online Unified Registration System (URS) and will stop accepting paper forms or faxes to apply or update records. URS will be the sole source of registration data for DOT staff and motor carriers, as well as for state licensing and roadside safety enforcement personnel. This system is not to be confused with Unified Carrier Registration, which is not a DOT program. Historically, companies did not pay to receive a USDOT number. Beginning September 30th, new applicants must pay a \$300 fee. (Asmark Institute)

DOL Issues New Overtime Rules

The Department of Labor (DOL) recently issued information regarding the final rules increasing the salary minimum for exempt employees. In brief, the following changes will be made:

- The minimum salary level will rise to \$47,476 or \$913 per week.
- Employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new minimum salary level.
- The annual compensation for highly compensated employees will rise to \$134,004.
- The effective date of the changes is December 1, 2016.
- The salary and compensation levels will be "updated" every three years, beginning January 1, 2020.
- The rules make no changes to the duties tests for exempt employees (executive, administrative, professional, computer-employee and highly-compensated exemptions).

While some in Congress are considering action aimed at stopping these changes, you should assume for the time being that the new requirements will take effect as scheduled. Visit: <https://www.dol.gov/whd/overtime/final2016/> for more information. (Asmark Institute)

