



## **Process Safety Management and Risk Management Plan Program Level 3 Frequently Asked Questions**

### **Introduction**

Due to a recent change in regulatory interpretation by the Occupational Safety and Health Administration (OSHA), agricultural retailers that handle anhydrous ammonia or other highly hazardous chemicals (HHC) in excess of threshold quantities are subject to Process Safety Management (PSM) rules. This change also means that agricultural retailers who were previously complying with the Environmental Protection Agency (EPA) Risk Management Plan (RMP) Program Level 2 (RMP 2) will now have to comply with RMP Program Level 3 (RMP 3). This document discusses the recent changes, describes PSM and RMP 3, and answers questions agricultural retailers may have as they consider how to comply with both regulations.

### **What Changed?**

On July 22, 2015, OSHA [issued a revised policy for retail facility exemptions under the PSM Standard \(29 CFR 1910.119\)](#). Under OSHA's old policy, an establishment that had highly hazardous chemicals (HHC) in threshold quantities was exempt from PSM coverage if it derived more than 50 percent of its income from direct sales of those HHCs to the end user. This exemption covered most agricultural retail facilities. The new policy states: "Only facilities, or the portions of facilities, engaged in retail trade as defined by the current and any future updates to sectors 44 and 45 of the NAICS Manual may be afforded the retail exemption at 29 CFR 1910.119(a)(2)(i)."

### **Does my facility have to comply with the new requirements?**

Under this new policy interpretation, any facility that holds more than [threshold quantities of a highly hazardous chemical](#) in stationary tanks, would be subject to PSM and RMP 3 requirements. Because most agricultural retailers are registered in NAICS Codes starting with 42, they would have to comply with both the PSM and RMP 3 requirements if they hold over 10,000lbs of anhydrous ammonia, or 15,000lbs of aqua ammonia (concentration greater than 40% ammonia), or any other HHC in threshold quantities.

### **What is PSM?**

The [Process Safety Management \(PSM\) standard \(29 CFR 1910.119\)](#) was established by OSHA. It sets requirements for facilities that handle highly hazardous chemicals (HHC) and is designed to help prevent the unexpected release of toxic, reactive, or flammable liquids or gases thereby minimizing potential employee exposures. [Appendix C](#) of the PSM standard provides some compliance guidance. PSM has 14 "elements" that must be integrated into both planning and operations at a facility, these elements are:

1. Process Safety Information
2. Process Hazard Analysis
3. Operating Procedures
4. Training
5. Contractors
6. Mechanical Integrity
7. Hot Work
8. Management of Change
9. Incident Investigation
10. Compliance Audits
11. Trade Secrets
12. Employee Participation
13. Pre-startup Safety Review
14. Emergency Planning and Response

The Asmark Institute dedicated its [recent newsletter](#) to describing PSM, the 14 elements, and things retailers need to consider in complying with PSM. Because PSM is a “management standard”, retailers and their employees will have to be able to demonstrate that they are actually training to and following the various maintenance procedures, operational procedures, and safety practices as outlined in their PSM documentation.

**What is RMP Program Level 3?**

The [Risk Management Plan \(RMP\) \(40 CFR Part 68\)](#) was established by the Clean Air Act and is implemented by EPA. It sets regulations for chemical accident prevention and requires facilities that handle HHCs to submit their risk management plan to EPA and local emergency responders so that they are aware of the potential risk when responding to an incident. While PSM is mainly concerned with prevention and onsite consequences of an accidental release, RMP is primarily concerned with offsite consequences. Most agricultural retailers, because they were exempt from PSM, had to comply with RMP 2 instead of RMP 3. However, due to the change by OSHA, agricultural retailers who are covered by PSM must also comply with RMP 3. From our conversations with OSHA, it is our understanding that RMP 3 requirements and PSM requirements are very similar with the exception that RMP requires an offsite consequence analysis.

**How is RMP 3 different from RMP 2?**

EPA has [prepared a document discussing the various program levels](#). RMP 3 adds multiple requirements that are not included in RMP 2. Below is a side by side of the RMP 2 requirements and RMP 3 requirements:

<b>RMP 2</b>	<b>RMP 3</b>
Worst-case release analysis	Worst-case release analysis
Alternative release analysis	Alternative release analysis
5-year accident history	5-year accident history
Document management system	Document management system
<b><i>Safety Information</i></b>	<b>Process Safety Information</b>
<b><i>Hazard Review</i></b>	<b>Process Hazard Analysis</b>
Training	Training
<b><i>Maintenance</i></b>	<b>Mechanical Integrity</b>
Incident Investigation	Incident Investigation
Compliance Audit	Compliance Audit
	<b>Management of Change</b>
	<b>Pre-Startup Review</b>
	<b>Contractors</b>
	<b>Employee Participation</b>
	<b>Hot Work Permits</b>
Develop plan and program and coordinate with local responders	Develop plan and program and coordinate with local responders
Submit one Risk Management Plan for All Covered Processes	Submit one Risk Management Plan for All Covered Processes

### **How long until our facility has to meet the new requirements?**

When OSHA issued its policy change regarding the retail exemption for PSM, the agency made it effective immediately. However, they did provide six months of enforcement discretion for newly covered facilities. This means that facilities which are now subject to PSM must be in compliance by January 22, 2016. Because RMP 3 applies to any facilities that are subject to PSM, and because the OSHA PSM policy change was effective immediately, retailers that are now covered by PSM will have to update their risk management plans to RMP 3. The EPA RMP regulations give facilities that change from RMP 2 to RMP 3 six months to submit updated risk management plans to the EPA. So both RMP 3 and PSM must be complied with by January 22, 2016.

The Fertilizer Institute and Agricultural Retailers Association have [asked OSHA to extend the compliance period](#) to give agricultural retailers more time to comply. We are also requesting that EPA provide more compliance time for RMP 3. However, given the short amount of time currently available for compliance retailers should proceed as though there will be no compliance extension, there is simply not enough time to wait and see.

### **Who can help me comply?**

When OSHA implemented the retail exemption policy change, it issued guidance stating that: “For the first six months following the issuance of the Retail Exemption Memorandum on July 22, 2015, OSHA will focus its resources on providing compliance assistance to affected employers, engage key industry stakeholders, and will inform its State On-Site Consultation Projects that during this period, requests from newly covered employers should be their highest priority for receiving an on-site visit.” OSHA has indicated to TFI staff that if retailers contact regional OSHA offices, they will provide compliance assistance. The compliance assistance staff are separate from the OSHA enforcement staff. This may be a cost effective way for retailers to better understand how PSM applies to their facilities.

ResponsibleAg is working with the Asmark Institute to prepare a PSM compliance tool that should be ready for use in mid-October. Facilities who participate in ResponsibleAg will be notified when the tool is ready for use.

There are a variety of contractors and consultants that can help retailers comply with PSM and RMP 3, TFI does not have an opinion on, or recommend any particular consultant. We encourage retailers who are considering retaining a consultant to ensure that they have past experience with both PSM and RMP 3 and are able to provide reliable references and services.

### **Is my entire facility covered by PSM?**

Generally no, only the “system” where the HHC is “processed” is covered. In this case, only the anhydrous ammonia system or aqua ammonia system, is subject to PSM.

### **What are the federal design and maintenance standards I will have to meet at my facility?**

The PSM standard references [Recognized and Generally Acceptable Good Engineering Practices \(RAGAGEP\)](#) in two sections, 1) Process Safety Information, and 2) Mechanical Integrity. This means that facilities must be able to show that their ammonia process was designed and constructed to the applicable engineering standards (ASME, API, ANSI, etc.). It also means that

the ammonia system must be maintained to any relevant standards. OSHA has stated that they do not choose the RAGAGEP the facility must use, instead the facility is responsible for demonstrating that its ammonia systems were built to the appropriate design standards and have been maintained in accordance with those standards.

For example, ammonia tanks bear an ASME Data Plate and are accompanied by a U-1A form. OSHA would require facilities to have BOTH the data plate and U-1A form for all ammonia tanks located at the facility. Additionally, if the ammonia system was built to the ANSI K61.1 Standard (1999) then the facility must be able, through engineering reports or other documentation, to demonstrate that the ammonia system was built and has been maintained to that standard. It is incredibly important that facilities can demonstrate through records that their facilities were built and have been maintained to the relevant standards. The [Asmark Institute Newsletter](#) has further discussion on this topic on page 4.

**Propane is on the list of highly hazardous chemicals, do I have to prepare a PSM/RMP 3 plan for propane as well?**

Propane sold for retail is listed under its own “retail” NAICS code (454310), so it is exempt from PSM. Agricultural retailers who have propane onsite at their facility will have to consider it in their process hazard analysis for any other covered chemicals, but the propane itself is not covered by PSM.

**Can I switch my NAICS Code to something in the 111 (Crop Production) or 115 (Support Activities for Agriculture and Forestry) to avoid PSM requirements?**

Farm operations are generally registered under either the 111 or 115 NAICS Code Series. However, OSHA’s position is that if a facility is selling HHCs to farmers and not using them exclusively in their own farming operations, irrespective of what NAICS Code they are registered under, then they are not considered farmers and would still have to comply with PSM and RMP3. OSHA is not going to base its inspection or enforcement decisions on the NAICS Code of a facility, instead they will assess the actual operations of the facility.