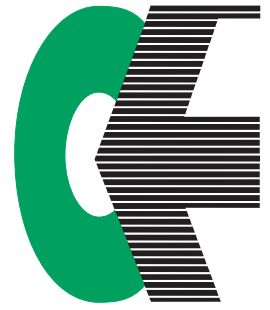


J. J. KELLER'S Compliance Focus

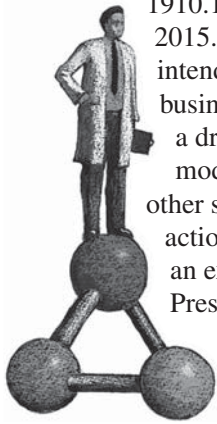


Workplace Safety, Environment, Transportation, and More

OSHA readies draft PSM proposal, posts clarifying memos

OSHA issued *two* memos (see JKeller.com/wsc) directly impacting the way its inspectors will enforce the Process Safety Management (PSM) Standard at 29 CFR

1910.119 starting June 5, 2015. The agency also intends to convene a small business panel to review a draft proposed rule to modernize the PSM and other standards. All three actions are in response to an executive order from President Obama back in 2013 to reexamine the chemical facility safety and security regulations.



Covered concentrations memo:

The first memo sets a new method for determining whether a process involves a chemical at or above the specified threshold quantities listed in Appendix A of the PSM Standard. OSHA now believes that a one percent concentration cut-off is the appropriate policy.

The memo explains and provides examples of the “one percent test.” The agency also adds that in determining the weight of a chemical present in a mixture, only the weight of the chemical itself, exclusive of any solvent, solution, or carrier, is counted. The memo rescinds all

previous policy relating to the use of a “maximum commercial grade” or “pure grade.”

RAGAGEP memo: Another memo examines how OSHA inspectors must determine whether employers are in compliance with the “recognized and generally accepted good engineering practices” (RAGAGEP) requirements under §1910.119(d)(3)(ii) and (j)(4)(ii)-(iii). RAGAGEP are

often found in adopted codes, consensus standards, and elsewhere.

Draft proposed rule: On June 8, OSHA notified the Small Business Administration that it intends to assemble a small business panel in early August. We anticipate the panel will review a draft PSM proposal from OSHA. The draft could be made available to the public once the panel convenes. Stay tuned!

New data on oil/gas industry deaths during boom

A report from the Centers for Disease Control and Prevention (CDC) shows that from 2003 to 2013, although the number of active drilling rigs on land and water increased by 71 percent and the number of oil and gas extraction workers more than doubled, the industry’s fatality rate significantly *decreased*.

Not surprisingly, the number of work-related fatalities in the oil and gas extraction industry *increased* 27.6 percent, with a total of 1,189 deaths from 2003 to 2013. Yet, the annual occupational fatality rate *significantly decreased* 36.3 percent during this 11-year period, from 29.0 to 19.1 per 100,000 workers per year.

Two-thirds of the fatalities were attributed to transportation incidents (40.3 percent) and contact with objects/equipment (25.9 percent). The remainder of the frequent events were due to fires or explosions; harmful substances or environments; or falls, slips, and trips.


CDC’s report recommends that the oil and gas industry continue to target the causes of the most frequent fatal events. Land transportation safety procedures for workers who drive and automated technologies to reduce worker exposure to oil rig hazards are suggested by the report. Go to 1.usa.gov/1dN72Da.

OSHA guards against meat slicer/grinder hazards

According to OSHA, in 2013, at least 4,000 incidents involving meat slicers occurred that resulted in lost workdays. It is well known that food slicers and meat grinders used in grocery stores, restaurants, and delicatessens, and other food service operations can cause serious cuts and amputations when workers operate, perform maintenance, or clean them.

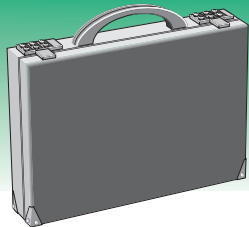
To combat these hazards OSHA

published a fact sheet that provides employers with ways to prevent cuts and amputations from work involving food slicers and meat grinders. The fact sheet covers related regulations, recommended safety procedures, training topics, and resources. The information is based on data gathered through OSHA’s reporting requirements that kicked in on Jan. 1, 2015. Go to JKeller.com/wsc.

 This newsletter is available online. Additional online features include: Editor’s message, “Ask an Expert” tool, and a rolling 12-month archive. Read on the go with our mobile and tablet friendly interface.

JKellerPublications.com

In brief



Lockout/Tagout guide

Oregon OSHA issued a guide to help employers understand how to control hazardous energy. See bit.ly/1JYvG1I.

Lead hazard inspections

A just-posted OSHA memo requires OSHA offices to consider the following establishment types for their lead inspection targeting: de-leaders, cleaning contractors (at firing ranges), small arms/ammunition manufacturers, electronic waste recycling, and landscaping services (at firing ranges). See 1.usa.gov/1BmKjJd.

OIG looking at OSHA

A new report from the Labor Dept. Office of Inspector General says the agency will scrutinize four areas in relation to OSHA: abatement verification, the Voluntary Protection Program (VPP), inspection targeting programs, and whistleblower protection. See 1.usa.gov/1CfVKgQ.

Two more OSHA Fatal Facts

OSHA added two documents to its Fatal Facts series — on a farmworker electrocution and an engulfment in a sugar hopper. See osha.gov/Publications/fatalfacts.html.

Searchable IARC list

The International Agency for Research on Cancer is now offering its *List of Classifications* in a searchable, sortable, online spreadsheet covering agents from Volumes 1 to 112. See bit.ly/1J6HS0a.

Environmental justice tool

EPA released a tool to identify places with potentially elevated environmental burdens and vulnerable populations. See www2.epa.gov/ejscreen.

Fact sheet #3 on 2016 CDR

EPA posted another fact sheet relating to the Chemical Data Reporting rule. See 1.usa.gov/1G8WF4h.

OSHA on transgender worker restroom access

OSHA says, “All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.” This is the core principle in an OSHA fact sheet that provides guidance on best practices regarding restroom access for transgender workers.

Under OSHA’s Sanitation Standard (29 CFR 1910.141), employers are required to provide their employees with toilet facilities, and OSHA has consistently interpreted this standard to require employers to allow employees prompt access to sanitary facilities. Further, employers may not impose unreasonable restrictions on employee use of toilet facilities.

The publication explains that employees generally may not be limited to using facilities that are an unreasonable distance or travel



time from the employee’s worksite. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status.

It should be noted that in April 2015, the Equal Employment Opportunity Commission ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity, regardless of whether that employee has had any medical procedure or whether other employees’ may have negative reactions to allowing the employee to do so.

Ultimately, the OSHA fact sheet argues the employee should determine the most appropriate and safest option for him- or herself. Go to JJKeller.com/wsc.

Feds work to improve chemical facility safety

A federal interagency working group sent a report to the President summarizing its progress to date in improving chemical facility safety and security. This is the fourth status report since August 2013.

The report shows that OSHA, EPA, and the Dept. of Homeland Security, have taken actions toward key regulatory reforms that relate to process safety, risk management, and chemical facility anti-terrorism. OSHA, EPA, and the Bureau of

Alcohol, Tobacco, Firearms and Explosives (ATF) have also updated and re-issued the *Chemical Advisory on Safe Storage, Handling, and Management of Ammonium Nitrate*.

In addition, EPA has posted two documents — one promoting the use of safer technology and alternative measures at chemical facilities, and another to help communities prepare for a chemical emergency. Other working group updates were also included. See 1.usa.gov/1K1jADe.

AST tragedy brings call for overfill protection rule

The Chemical Safety Board released a draft investigation report and excerpt from an upcoming video on the 2009 explosion at a gasoline terminal facility. The incident occurred when gasoline overflowed from an aboveground storage tank, forming a 107-acre vapor cloud that ignited, damaging nearby homes, businesses, soil, waterways, and wetlands.

The CSB’s investigation found that the measuring devices used to determine the liquid levels in the tanks at the facility were poorly maintained

and frequently not working. The investigation concluded that if added protections such as an alarm or an automatic overfill prevention system had been present, the release would have been prevented.

CSB calls for OSHA to amend 29 CFR 1910.106 and 1910.119 and EPA to amend 40 CFR 68 and 112 to require flammable storage tanks to be equipped with automatic overfill protection systems and undergo regular testing and inspection. See 1.usa.gov/1eskvkj.

FMCSA sets procedures for submitting CBI

FMCSA has established procedures to further protect from public disclosure certain confidential commercial or financial information voluntarily submitted to the agency. This information is referred to as “confidential business information” (CBI). Specifically, the June 10 final rule:

- Adds a new section to 49 CFR 389 establishing the standards and procedures the agency will use regarding the submission of CBI;
- Sets procedures for asserting a claim of confidentiality by parties who voluntarily submit CBI to the

agency in connection with a notice-and-comment rulemaking and in a manner consistent with the standards adopted in the June 10 rule itself;

- Does not change the standard under which CBI is protected from disclosure under the Freedom of Information Act; and
- Does not impose any additional regulatory burden, says FMCSA.

View www.FMCSA.dot.gov/foia/cbi.



Exemption requests decided by agency

FMCSA announced its decision for four exemption requests of general interest. Specifically, the agency:

- Denied an exemption application to non-compliant use of glazing in the windows to the right and left of the driver;
- Granted an exemption to a company that allows a commercial learner’s permit holder who has documentation of passing the CDL skills test to drive a commercial vehicle without being accompanied by a CDL holder;
- Renewed an exemption from the 30-minute rest break provision for commercial drivers transporting livestock; and
- Renewed an exemption to regular-route passenger carriers/drivers from the requirement to enter a change of duty status on the daily log for breaks in driving time of 10 min. or less, in order to pick up or drop off passengers, baggage, or small express packages.

See JKKeller.com/tmc.

New hazmat loading and unloading guide

A new PHMSA guide is intended to aid hazmat employers and others responsible for cargo tank motor vehicle (CTMV) loading/unloading. The publication offers best practices to further enhance the safety of these operations. A comprehensive summary of the regulations applicable to CTMV loading/unloading operations is provided in an appendix.

The agency explains that human error continues to be a major contributing factor for incidents occurring during these loading/unloading operations. Examples include failing to attend a loading/unloading operation, making improper connections, overfilling tanks, and using defective devices. The guide focuses on training and recommended operating procedures in an effort to help decrease these types of incidents. Go to <http://1.usa.gov/1QFIgXw>.

Truck size/weight reports rolled out by FHWA

The Federal Highway Administration (FHWA) released five technical reports on truck size and weight for peer review and public comment as the agency moves closer toward the completion of the comprehensive study called for in MAP-21.

The MAP-21 law directed the agency to study issues associated with trucks operating within and in excess of current size and weight limits and assess the impacts on safety, pavement, bridge deterioration, enforcement, and shifts to other modes of transport such as rail.

The latest reports cover those areas of study and provide an opportunity for experts in the field to comment in anticipation of the final report to Congress. It is noteworthy that FHWA found data limitations which are so profound that it advises no changes in the relevant laws and regulations be considered until these limitations are overcome.

The agency says it will meet with an independent peer review team and seek public comment as it works to develop the final report to Congress. Go to 1.usa.gov/1cgSk4L.

Final electronic stability control rule announced

The National Highway Traffic Safety Administration (NHTSA) announced its rule to require electronic stability control (ESC) systems on heavy trucks and large buses (FMVSS No. 136). ESC works instantly and automatically to maintain directional control in situations where the driver’s own steering and braking cannot be accomplished quickly enough to prevent the crash.

The soon-to-be-published final rule will require ESC systems on heavy trucks and large buses exceeding 26,000 pounds in gross weight. Compliance will be tested using a “J-turn” test that replicates a curved highway off-ramp.

The NHTSA rule will take effect for most heavy trucks two years from publication. The requirement will

take effect in three years for buses larger than 33,000 pounds and four years for those weighing between 26,000 and 33,000 pounds.

The agency estimates the rule will prevent as many as 1,759 crashes, 649 injuries, and 49 fatalities each year. Visit JKKeller.com/tmc.

Collision avoidance systems recommended

In a report released on June 8, the National Transportation Safety Board outlined the lifesaving benefits of currently available collision avoidance systems, and recommended that the technology become standard on all new commercial and passenger vehicles. For information, check out both 1.usa.gov/1e0m6hq and 1.usa.gov/1QFHxvP.

Final 2015 stormwater permit now in effect

EPA issued a revised Multi-Sector General Permit (MSGP) for stormwater discharges from industrial activities. The 2015 MSGP replaces the 2008 MSGP, and its provisions are largely similar to the 2008 permit. However, key changes include:



- Revised threatened/endangered species eligibility procedures.
- Additional specificity for several of the technology-based effluent limits (i.e., control measures);
- Facilities discharging to a small number of federal Superfund sites must notify their EPA regional office prior to filing their Notice of Intent (NOI);
- In the Stormwater Pollution Prevention Plan (SWPPP) documentation, facilities do not have to expound on their compliance with certain effluent limits;
- Public accessibility to SWPPP information;
- Electronic submission for the NOI, Notice of Termination, annual report, and monitoring;
- Facilities no longer have to conduct a separate comprehensive site inspection;
- Specific deadlines for taking corrective actions;
- Inclusion of saltwater benchmark values for metals; and
- Inclusion of the “Airport Deicing Effluent Limitation Guideline.”

See the permit and upcoming submittal and reporting deadlines at 1.usa.gov/1HXQvNH.

EPA assesses fracking impacts on drinking water

EPA released a *draft* assessment of the potential impacts of oil and gas hydraulic fracturing activities (a.k.a. fracking) on the quality and quantity of drinking water resources in the U.S. The draft is now up for public comment and peer review.

EPA explains that the document shows that while hydraulic fracturing activities in the U.S. are carried out in a way that have not led to wide-

spread, systemic impacts on drinking water resources, there are potential vulnerabilities in the water lifecycle that could impact drinking water. These vulnerabilities include things like fracking directly into drinking water sources, below ground migration of gases/liquids, discharging poorly treated wastewater into drinking water sources, and fracking fluid spills. See 1.usa.gov/1H23cUb.

Court strikes down backup generator exemptions

On Jan. 30, 2013, EPA issued a final rule that, in part, modified three air regulations to allow reciprocating internal combustion engines (RICE), also known as backup generators or emergency engines, to operate without emissions controls for up to 100 hours per year as part of an emergency demand-response program.

However, on May 1, 2015, the U.S. Court of Appeals for the D.C. Circuit vacated the 2013 changes to those emergency engine regulations, found at 40 CFR 63.6640(f)(2), 60.4211(f)(2), and 60.4243(d)(2). The court found that the rule was “arbitrary and

capricious” and that EPA failed to consider comments that questioned the rule’s impact on the power grid or that questioned the evidence upon which the rule was based.

Currently, EPA is reviewing the court’s decision. The agency has until July 15 to file a motion to stay the court mandate. EPA may also request that the current standards remain in place or that the agency be allowed a reasonable time to develop interim standards. Any updates regarding the regulation will be posted at epa.gov/ttn/atw/icengines.

EPA proposes fuel standards for 2014-2017

EPA proposes to establish the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to all gasoline and diesel produced or imported in years 2014, 2015, and 2016. The agency is also proposing the applicable volume of biomass-based diesel that will be required in 2017.

Comments on the proposal must be received on or before July 27, 2015. EPA intends to take final action on this proposal by Nov. 30, 2015,

which will return the agency to the program’s statutory timeline for issuing annual Renewable Fuel Standards (RFS) rules. View 1.usa.gov/VG21E6.

GHGs from aircraft: EPA takes actions

In a recent announcement, EPA proposes to find that greenhouse gas emissions from certain aircraft engines contribute to air pollution and endanger public health and welfare. See epa.gov/oms/aviation.htm.

Copyright 2015 J. J. Keller & Associates, Inc.

Neither the *Compliance Focus* nor any part thereof may be reproduced without the written permission of J. J. Keller. Government regulations change constantly, therefore, J. J. Keller cannot assume responsibility or be held liable for any losses associated with omissions, errors, or misprintings in this publication. This publication is designed to provide reasonably accurate information and is sold with the understanding that J. J. Keller is not engaged in rendering legal, accounting, or other professional services. If legal or other expert advice is required, the services of a competent professional should be sought.

DIRECTOR OF EDITORIAL RESOURCES: Paul V. Arnold

EDITOR: Tricia S. Hodkiewicz

CONTRIBUTING EDITORS: Kathy Close, Daren Hansen, Lisa Neuberger, Travis Rhoden, Angie Zernzsch

ISSN 1087-853X

GST R123-317687

(41797)

 **J. J. Keller**
& Associates, Inc.[®]
Since 1953

 Printed on
Recycled Paper
(30% Post Consumer)

