

Comments on Section 9131

Section 9131 of the bill, *Definition of retail facilities*, would require DOL to revise the Occupational Safety and Health Administration's (OSHA) Process Safety Management of Highly Hazardous Chemicals (PSM) standard to define retail facilities as a facility that has obtained more than half of its income from the direct sales to end users or consumers (including farmers or ranchers). **DOL is opposed to section 9131 as it is unnecessary and would create enforcement problems, as discussed below.**

This statutory proposal is unnecessary because OSHA issued a revised enforcement policy on April 30, 2018, regarding the exemption for retail facilities as prescribed in the process safety management standard (29 CFR 1910.119(a)(2)(i)). The enforcement policy specifically exempts the following industry groups from enforcement under the standard:

- NAICS 424510 – Grain and Field Bean Merchant Wholesalers
- NAICS 424590 – Other Farm Product Raw Material Merchant Wholesalers
- NAICS 424910 – Farm Supply Merchant Wholesalers

Further, as drafted, the new definition would create enforcement problems for OSHA. It would require OSHA compliance officers to develop and use accounting expertise to determine 12-month income sources. This definition would also create ambiguity for the entire standard because nearly anyone producing a highly hazardous chemical is selling it to a “consumer.” As drafted, the language could create the unintended consequence of permitting a large chemical facility to claim retail exemption status because it sells directly to an end user of the chemical. This could effectively eliminate the entire chemical manufacturing sector from coverage under the PSM standard, jeopardizing the safety and health of chemical facility workers. At a minimum, any language should address only the three agricultural retail NAICS codes addressed above.