

to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

#### Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

#### Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### List of Subjects in 22 CFR Part 121

Arms and munitions, Exports, U.S. Munitions List.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is amended as follows:

#### PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920.

■ 2. Section 121.1 is amended in paragraph (c) by revising paragraph (e), Note (1)(i) and (ii) of Category VIII—Aircraft and Associated Equipment to read as follows:

#### § 121.1 General. The United States Munitions List.

\* \* \* \* \*

#### Category VIII—Aircraft and Associated Equipment

\* \* \* \* \*

(e) \* \* \*

**Note:** (1) \* \* \*

(i) Are integrated into and included as an integral part of a commercial primary or commercial standby instrument system for use on civil aircraft prior to export or exported solely for integration into such a commercial primary or standby instrument system, and

(ii) When the exporter has been informed in writing by the Department of State that a specific quartz rate sensor integrated into a commercial primary or standby instrument system has been determined to be subject to the licensing jurisdiction of the Department of Commerce in accordance with this section.

\* \* \* \* \*

Dated: March 26, 2007.

**John C. Rood,**

*Assistant Secretary for International Security and Nonproliferation, Department of State.*

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**BILLING CODE 4710-25-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

#### Interpretation of OSHA's Standard for Process Safety Management of Highly Hazardous Chemicals

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Interpretation.

**SUMMARY:** This Notice constitutes the Occupational Safety and Health Administration's official interpretation and explanation of the phrase "on site in one location" in the "Application" section of OSHA's Process Safety Management of Highly Hazardous Chemicals standard. ("PSM").

**DATES:** *Effective Date:* June 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Kevin Ropp, Director, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999; fax (202) 693-1635. For technical information contact: Mike Marshall, PSM Coordinator, Directorate of Enforcement Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3119, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1850; fax (202) 693-1681.

**SUPPLEMENTARY INFORMATION:** This Federal Register Notice addresses OSHA's interpretation of the term "on site in one location" in the scope and application section of the PSM standard. As set forth below, OSHA interprets this term to mean that the standard applies when a threshold quantity (TQ) of a highly hazardous chemical (HHC) exists within contiguous areas under the control of an employer, or group of affiliated employers, in any group of vessels that are interconnected, or in separate vessels that are located in such proximity that the HHC could be involved in a potential catastrophic release, as indicated in the regulatory definition of "process."<sup>1</sup>

<sup>1</sup> The term "contiguous" has been found to mean either "nearby" or "in actual contact" in terms of the application of an OSHA standard. Empire Company, Inc., 17 BNA OSHC 1990 (Docket No. 93-1861, 1997), affirmed 136 F.3d 873 (1st Cir. 1998). See also 136 F.3d at 878, citing Black's Law Dictionary 320 (6th ed. 1990) ("In close proximity; neighboring \* \* \*"). References to "contiguous" areas in this Notice carry the same meaning.

## A. Introduction

The meaning of "on site in one location" was at issue in a recent case before the Occupational Safety and Health Review Commission. *Motiva Enterprises*, 21 BNA OSHC 1696 (OSHRC No. 02-2160, 2006). In that decision the Review Commission queried whether that language was meant to limit in some way the applicability of the standard to a highly-hazardous-chemical process. In the absence of an authoritative interpretation, the Review Commission decided it could not determine that the cited activities were "on site" and "in one location," and it vacated the citations. Recognizing that OSHA is the policymaking actor under the Occupational Safety and Health Act, it left it to the agency to decide "in the first instance \* \* \* the meaning of these terms and offer an 'authoritative interpretation.'" It also said that "[a]ny such subsequent interpretation" would be reviewed in a future case "under 'standard deference principles.'"

The PSM standard provides, in pertinent part:

(a) *Application.* (1) This section applies to the following:

(i) A process which involves a chemical at or above the specified threshold quantities listed in appendix A to this section;

(ii) A process which involves a flammable liquid or gas (as defined in § 1910.1200(c) of this part) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more \* \* \* .

29 CFR 1910.119(a).

The standard defines "process" to mean:

\* \* \* any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling, or the on-site movement of such chemicals, or combination of these activities. For purposes of this definition, any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.,

29 CFR 1910.119(b).

The standard defines "highly hazardous chemical" to mean:

\* \* \* a substance possessing toxic, reactive, flammable, or explosive properties and specified by paragraph (a)(1) of this section.

*Ibid.*

The standard thus provides regulatory definitions for the application provision's key terms, "process" and "highly hazardous chemical." It omits, however, any definition for the phrase "on site in one location" that is

included in subsection (a)(1)(ii) of the Application provision.

In providing this Notice's clarification of the intended coverage of the standard, OSHA has determined that, considering the history, language, structure and purposes of the PSM standard, it is abundantly clear that there is considerable overlap between the term "on site in one location" and the definition of "process" adopted in the final version of the standard. In addition, "on site in one location" serves the independent function of excluding coverage where the HHC threshold would be met only if all amounts in interconnected or proximate vessels or pipes were aggregated but some of the amounts needed to meet the threshold quantity are outside the perimeter of the employer's facility. For example, trucks and pipelines outside the boundaries of the employer's property, which may be regulated by the Department of Transportation in any event, are excluded.

## B. The Regulatory History

### 1. Notice of Proposed Rulemaking, July 17, 1990 (NPRM)

In response to several major disasters in both the United States and abroad, OSHA began to develop a comprehensive standard addressing hazards related to releases of HHCs in the workplace. On July 17, 1990, OSHA published a Notice of Proposed Rulemaking (NPRM) at 55 FR 29150. Approximately four months later (November 15, 1990), Section 304 of the Clean Air Act Amendments (CAAA) of 1990, Public Law 101-549, required the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, to promulgate, pursuant to the Occupational Safety and Health Act of 1970, a chemical process safety standard to prevent accidental releases of hazardous chemicals that could pose a threat to employees. The Act also directed EPA to issue a rule addressing the hazards to the public of releases of such chemicals into the atmosphere and to coordinate the provisions with comparable OSHA requirements, (42 U.S.C. 7412(r)(7)).

The NPRM's scope and application section included the following statement of the standard's intended application:

(b) *Application.* (1) This section applies to the following\* \* \*

(i) Processes\* \* \*

(ii) Processes which involve flammable liquids or gases (as defined in § 1910.1200(c) of this part) onsite in one location in quantities of 10,000 lbs or more\* \* \*, 55 FR 29163.

Under the proposal the term "process" would be defined as:

\* \* \* any activity conducted by an employer that involves a highly hazardous chemical including any use, storage, manufacturing, handling, or movement of a highly hazardous chemical, or a combination of these activities.

*Ibid.*

Thus, the NPRM applied to processes in the plural, and the definition of "process" did not include any language indicating a geographic limit to what constituted a covered "activity." The subsection on application to flammable liquids and gases included "on site in one location," without explaining the phrase. The subsection on application to listed hazardous chemicals lacked any parallel language.

### 2. The Rulemaking Record and Hearing Process

In response to the NPRM, OSHA received over 175 written comments. OSHA's review of the comments revealed a significant issue of how TQs of HHCs were to be calculated. Because OSHA had used the plural term "processes" in the NPRM, which could suggest multiple processes in separate locations, some stakeholders expressed concern as to whether OSHA intended TQs be calculated by an aggregate of all HHC present at an employer's facility, or by the amount of an HHC present in one particular process. (See *e.g.*, Exs. 3-104, 109, 112, 119, 125, 126).<sup>2</sup>

Recognizing this confusion, OSHA, in a **Federal Register** notice of November 1, 1990,<sup>3</sup> clarified its intent that TQs would be calculated by process or location, and not on a facility-wide basis:

OSHA did not intend that facilities aggregate quantities of covered chemicals. The important factor is the amount of a listed chemical in a plant that could be released at one point in time. If the total amount of a listed chemical in a plant exceeds its threshold quantity of 1000 pounds, for example, *but the chemical is used in small quantities around the plant and is not concentrated in one process or in one area*, OSHA believes that a catastrophic release of the entire material would be unlikely. 55 FR 46074, 46075) (emphasis added).

At hearings on the proposal held in Washington, DC and Houston, TX, and in additional written comments, stakeholders almost uniformly accepted OSHA's explanation of its intent that TQs of HHCs were to be calculated by

<sup>2</sup> All citations to either exhibits or transcripts in this instruction are references to the PSM Standard's Rulemaking Docket, No. S026, available at <http://www.regulations.gov>.

<sup>3</sup> This **Federal Register** notice also announced additional hearings in Houston, TX.

individual process and not through aggregation of all processes present in a facility. Several major trade associations and refinery employers concurred with OSHA's conclusions, (Tr. 1113, 2591-92, 3038, 3419, 3192; Exs. 3-165, 3-170). Commenters urged that this aggregation principle should apply regardless of the type of HHC, (*e.g.*, Tr. 1113, 3038, 3192; Ex.-109).

In addition, during the rulemaking, commenters noted that HHCs concentrated in a single interconnected process should be subject to the requirements of the PSM standard, (Ex. 3-165, 3-166). The concept of interconnectedness was integral to American Petroleum Institute (API) 750, *Management of Process Hazards*, an industry consensus document on managing process hazards. This was one of the industry practices OSHA referenced when developing the PSM Standard, (55 FR 29159). Specifically, API 750 defined a "facility" and "process" as follows:

1.4.4 A *facility* comprises the buildings, containers, and equipment that could reasonably be expected to participate in a catastrophic release as a result of their being physically interconnected or of their proximity and in which dangerous chemicals are used, stored, manufactured, handled, or moved.

1.4.5 *Process* refers to the activities that constitute use, storage, manufacture, handling, or movement in all facilities that contain dangerous substances.

### 3. The Final Rule

On February 24, 1992, OSHA promulgated the final PSM standard, (57 FR 6356). With respect to TQ calculations, OSHA again reiterated its November 1, 1990 statement of intent, noting that it "continues to believe that the potential of a catastrophic release exists when a highly hazardous chemical is concentrated in a process." OSHA also stated that it "agrees with those commenters" who argued that "highly hazardous chemicals in less than threshold quantities distributed in several processes would not present as great a risk of catastrophe as the threshold quantity in a single process." (57 FR 6364).

To reflect its agreement with the commenters and API 750 on this point, OSHA modified the definition of "process" in the final rule. First, the "Application" provision was stated in terms of a "process" rather than "processes." Next, as set forth above, the final standard augmented the NPRM's definition of "process" by adding language to clarify that "interconnected and nearby vessels containing a highly hazardous chemical would be considered part of the single

process and the quantities of the chemical would be aggregated to determine if the threshold quantity of the chemical is exceeded". *Id.*, at 6372 (emphasis added). OSHA also added the term "on-site movement" to the list of covered activities. Finally, OSHA specifically stated that the term "process," when used in conjunction with the application section of the standard, establishes the intent of the standard, (57 FR 6372). As a result, OSHA intended that the term "process" be read in conjunction with the terms "on site in one location" when evaluating the applicability of PSM. There was no further preamble discussion, however, on what, if anything, "on site in one location" was meant to convey.

The regulatory history establishes several key points. First, OSHA intended "process" to be the central term elucidating the standard's coverage. Second, employers need not aggregate all amounts of a chemical in an entire facility to determine whether a threshold quantity is present. Instead, only amounts in a group of vessels that are interconnected, or in vessels that are separate but sufficiently close together that they could be involved in the same release, are to be aggregated. Finally, the agency intended no distinction in the application of these principles between listed chemicals subject to 29 CFR 1910.119(a)(i) and flammables subject to 29 CFR 1910.119(a)(ii).

#### 4. The Environmental Protection Agency (EPA) Risk Management Program (RMP)

In addition to directing OSHA to develop the PSM standard, Congress directed EPA to address the hazards of catastrophic releases of highly hazardous chemicals to the atmosphere, (42 U.S.C. 7412(r)). EPA issued its rule on June 20, 1996, following promulgation of OSHA's PSM standard, (61 FR 31667). While the definition of "process" in the EPA-prescribed RMP is identical to the PSM definition, RMP does not use the term "on site in one location". Instead, RMP uses the term "stationary source," which is defined, in relevant part, as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur." (40 CFR 68.3). This is the same definition used by Congress. (42 U.S.C.A 7412(r)(2)(c)).

### C. The Regulatory Language and Structure

As noted above, the Secretary construes the phrase "on site in one location" to refer to contiguous areas under the control of an employer, or group of affiliated employers, and, within that area to a group of vessels that are interconnected, or separate but sufficiently near each other that they could be involved in a catastrophic release. This interpretation accords with the ordinary dictionary meanings of "site" and "location" and with the context of the entire application provision and the related regulatory definitions for "process" and "highly hazardous chemical." In interpreting the phrase, moreover, the Secretary has concluded that to give meaning to all the words of the standard, a certain degree of redundancy is inevitable; and that it would not be faithful to the drafters' intent or the purposes of the standard to construe "on site in one location" as completely separate from the definition of "process," since the result would be to read part of the "process" definition out of the standard altogether. In so concluding, the Secretary notes that the overlap of "process" with "on site in one location" parallels a similar overlap with "highly hazardous chemical," as the latter term appears both in the "process" definition and in the language of the application provision and its definition includes a reference back to the application provision. Thus, the standard applies to a process, a process is an activity involving a highly hazardous chemical, and a highly hazardous chemical is, inter alia, a chemical that is specified by the standard's application provision, 29 CFR 1910.119(a), (b). But, despite this evident circularity, nobody has ever objected to that overlap. Similarly, there is unavoidable overlap between "on site in one location" and the portions of the process definition that refer to interconnection and location.

The interpretation provided here is consistent with the ordinary dictionary meaning of "on site in one location." The dictionary defines "site" to mean, primarily, "the position or location of a town, building, etc., esp. as to its environment." *Webster's Unabridged Dictionary 1128, 1788* (2d ed. 2001). It defines "location" to mean, primarily, "a place or situation occupied." *See also American Heritage Dictionary* (1976), 1210 (defining "site" as "the place or plot of land where something was or is to be located"), 765 (defining "location" to mean "a place where something is or might be located; a site or situation"); *Black's Law Dictionary*

(7th ed. 1999), at 1392 ("site" means "a place or location; esp., a piece of property set aside for a specific use"), at 951 ("location" means "the specific place or position of a person or thing"). That "site" and "location" are virtually synonyms provides further support for the conclusion that avoiding redundancy was not uppermost in the minds of the drafters. Read together, however, they reinforce the idea that OSHA intended to give "highly hazardous chemical" and "process" a rough geographical, as well as functional, limit.

This intent may be further discerned from consideration of relevant regulatory history. CAAA Section 304 directed the Secretary, in coordination with EPA, to promulgate a chemical process safety standard designed to protect employees from hazards associated with accidental releases of HHCs in the workplace. Although EPA's RMP Rule at 40 CFR part 68 *et seq.* does not contain an "on site" (or "in one location") limitation in its text, Congress's defining EPA coverage in terms of a "stationary source" accomplishes the same limitation. "Stationary source" is defined as any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur, (42 U.S.C.A § 7412(r)(2)(c)).<sup>4</sup> Because Congress mandated OSHA and EPA coordination in addressing the release of hazardous substances, the regulations of the two agencies are to be construed together. In other words, the boundaries of a covered facility under PSM will be similar to the boundaries of a stationary source under RMP, and "on site in one location" is given essentially the same meaning as the "which are located on one or more contiguous properties" component of the term "stationary source," while the rest of the definition mirrors OSHA's definition of "process." Just as that term encompasses most of the PSM "process" definition, this construction of "on site in one location" also encompasses the inclusion of the "on-site movement" of HHCs that was added to the definition of "process" in the final rule. Although neither the NPRM nor the preamble to the final rule provides any detailed explanation of this inclusion, it would be consistent with the statutory aims of the CAAA to

<sup>4</sup> This term was directly adopted into RMP at 40 CFR 68.3.

limit PSM coverage to facilities included in the “stationary source” definition. To that end, the Secretary also reads the limitation in “stationary source” to locations “which are under the control of the same person (or persons under common control)” as being implicit in the phrase “on site in one location” and, indeed, in the definition of “process” (since the former phrase only relates explicitly to flammable liquids and gases, and not to Appendix A toxic substances).

This construction also comports with the regulatory history on aggregating the TQs of HHCs. As noted in the comments of stakeholders, “on site in one location” could not be naturally read with the plural term “processes” in proposed § 1910.119(b)(1)(ii). A large facility can have separate processes at different locations within its boundaries, a point raised by Allied Signal in its comments (Ex. 3–17). The American Paper Institute similarly commented that “a significant concern for us is that the proposed rule is unclear as to how an employer can determine when the rule would apply to a particular facility handling chemicals at different locations of that facility.” (Tr. 1112).

Not only did the stakeholders point out that the NPRM’s scope and application section was inconsistent with the proposed definition of “process,” OSHA itself recognized the issue and took the unusual step of clarifying its intent in an interim proposal document. By stating that a chemical used in small quantities around the plant and not concentrated in one process or in one area would be unlikely to cause a catastrophic release, OSHA clearly sought to limit coverage of the PSM standard to situations where a TQ of an HHC was concentrated in a single, including an interconnected, process. Despite the inexact use of the plural “processes” in the NPRM, it was never the agency’s intent to cover HHCs sufficiently dispersed in various locations on a large site, and in more than one process, such that their release from any one process would not cause the type of catastrophic harm that this standard was aimed to prevent. The use of “on site in one location” in the provision regarding flammables was intended to signal that employers would not need to aggregate all sources of the chemical facility-wide, or those outside the bounds of the employers’ facility, although the provision did not clearly describe the agency’s intent regarding which sources should be aggregated.

The hearing transcripts and written comments confirm that members of the refinery industry, an industry with a

particular interest in OSHA’s regulation of flammable liquids and gases, understood and accepted OSHA’s clarified position. For instance, Shell Oil Company testified that it “strongly supports OSHA’s position that owners should not aggregate quantities of chemicals at separate locations across a facility to determine if threshold quantities have been reached”, (Tr. 2591). BP testified that “if flammables are over 10,000 pounds in process, the rule applies to that process”, (Tr. 3038). Amoco Corporation agreed that “OSHA clarified that the threshold quantities of highly hazardous chemicals are determined on process basis, rather than by aggregating quantities of like chemicals for an entire facility”, (Ex. 3–165). Union Carbide similarly stated its understanding that “all of the thresholds be calculated on a ‘per process’ basis”, (Ex. 3–109).

OSHA reiterated this position in the final rule, stating that it “continues to believe that the potential hazard of a catastrophic release exists when the highly hazardous chemical is concentrated in a single process”, (57 FR 6364). This was in agreement with those stakeholders who argued that TQs should not be aggregated over an entire facility, (e.g., Tr. 2591, 3192; Exs. 3–163, 3–164). OSHA’s final position was that PSM coverage could only be found if a TQ of an HHC exists in a single process.

To the extent “on site in one location” did not adequately convey that intent, the more precise revision of the definition of “process” as a result of the record comments did so by clarifying that the standard’s scope was meant to apply to an area more confined than multiple processes, but more expansive than a single process point, where the process involves inter-connecting vessels or pipes, or vessels in close proximity such that the release of an HHC in one could trigger a chain reaction in the others. Accordingly, OSHA modified the definition of “process” to include the concepts of “interconnection” and “co-location” with addition of the language, “any group of vessels which are interconnected or separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.” 29 CFR 1910.119(b). OSHA stated in the final rule that this definition, when read in conjunction with the application section, establishes the standard’s intended coverage, (57 FR 6372). Therefore, a “single process” containing a TQ of an HHC includes an “interconnected” or closely co-located process.

#### D. The Regulatory Purpose

Construing “on site in one location” in tandem with the final, expanded definition of “process” also serves OSHA’s intended purposes. First, the full definition of “process” makes clear that it was not OSHA’s intent that it would be required to prove that a release of an HHC in one component of an interconnected process could affect a release in other components of the same interconnected process in order for the PSM standard to apply. Rather, the intent of OSHA and the understanding of the stakeholders were to the contrary, as the rulemaking record indicates. For example, AT&T recommended that OSHA define threshold quantity as “the maximum amount in pounds in a process (or connected processes)”, (Ex. 3–126). Asarco, in its comments, suggested that an interconnected process should be covered by the PSM standard. (Ex. 3–125). API, the leading trade organization of the refinery industry, included the concept of interconnection in its Recommended Practice 750. As described *supra*, API 750 applied to “facilities” that use, produce, process or store flammable or explosive substances that are present in such quantity and condition that a sudden, catastrophic release of more than five tons of gas or vapor can occur over a matter of minutes, based on credible failure scenarios and the properties of the materials involved, (API 750 1.3.1.1(a)).<sup>5</sup> The term “facilities”, as used in API 750, includes buildings, containers, and equipment that are physically interconnected, (*see* API 750 1.4.4).

The presence of the word “or” between interconnected and co-located vessels in the final rule demonstrates that two potential avenues exist to find a covered process when several aspects may be involved in the overall process. The plain language of the definition establishes two distinct burdens of proof when considering the applicability of PSM to an interconnected or a co-located process. With respect to a co-located process, OSHA would be required to demonstrate as part of its *prima facie* case that unconnected but co-located processes are situated in a manner that a release from one process could contribute to the release of the other. In contrast, the definition of “process” contains no such requirement for an interconnected process. In other words, OSHA’s intent is that the phrase “which are located such that a highly

<sup>5</sup> In the final rule, OSHA rejected API’s TQ of 5 tons of released flammable vapor as too complex, using instead the 10,000 pounds TQ. 57 FR at 6366–67.

hazardous chemical could be involved in a potential release" modifies only the immediately-preceding "separate vessels," making the entire phrase parallel to the free-standing phrase "any group of vessels which are interconnected." Thus, there is no additional requirement on OSHA to show the potentiality of a release with respect to interconnected (as opposed to separate) vessels. Rather, the PSM standard presumes that all aspects of a physically connected process can be expected to participate in a catastrophic release.

Second, it is clear that, in revising the "process" definition to encompass the "on-site movement" of HHCs and the twin concepts of inter-connectedness and co-location, OSHA intended that definition to bear most of the weight of defining the scope of the standard. As originally drafted, the "process" definition not only did not have these clarifications, but "onsite in one location" appeared only in the subsection on flammable liquids and gases, and not in the subsection on Appendix A toxic substances. There is no obvious explanation why this was so. As noted, the phrase was intended to signal that it was not necessary to aggregate all sources of a chemical within, or beyond, the employer's facility. The final standard clarified and more precisely stated this intent and made clear that the same principles applied to both listed and flammable chemicals.

The phrase in the final standard continues to carry its original NPRM meaning of setting a geographic boundary ("on site") and, within that boundary, a site-specific parameter ("in one location"). But after the definition of "process" was changed in the final rule to include explicit language clarifying that a "single process" includes "any group of vessels which are interconnected or separate vessels which are located such that a highly hazardous chemical could be involved in a potential release," the limitation placed on application of the standard to flammable liquids and gases denoted by the related phrase "on site in one location" no longer carries the independent weight it had before OSHA clarified the intended meaning of "process." As previously stated, however, it continues to serve a separate purpose by operating to exclude coverage where the HHC threshold would be met only if all amounts in interconnected or co-located vessels were aggregated but some of the amounts needed to meet the threshold quantity are outside of the perimeter of the employer's facility.

### E. The Response to the Motiva Decision

In the Motiva decision, the Review Commission appropriately left to the Secretary the task of interpreting "on site in one location" as it appears in the PSM standard, rather than doing so as an initial matter on its own. This Notice accomplishes that function. The interpretation set forth here is supported by the language, history and purposes of the standard and is consistent with the position adopted by EPA. In the absence of an agency interpretation, the Review Commission had focused on another guide to regulatory intent, the canon of construction that says that all the words of a statute (or regulation) should be assumed to have their own meaning, and suggested that "on site in one location" therefore has a meaning wholly apart from process. Regardless of the strength of this canon, the Secretary has satisfied it here by interpreting "on site in one location" to limit coverage to vessels within contiguous areas controlled by an employer or group of affiliated employers.

More fundamentally, the Secretary agrees that canons of construction can be useful guides to regulatory intent. They are guides only, however, and should not be mechanically applied in the face of stronger indicia of intent. The flip side of the canon referred to above is the rule that the words of a standard (or regulation) should not be given meaning at the expense of rendering other words meaningless. Accordingly, the courts have put aside the general rule against redundancy in statutes if applying the rule would be counter to legislative intent. See *Gutierrez v. Ada*, 528 U.S. 250, 258 (2000) ("rule against redundancy does not necessarily have the strength to turn a tide of good cause to come out the other way"); *Morton v. United Parcel Service, Inc.*, 272 F.3d 1249, 1258 (9th Cir. 2001) (rule of redundancy not followed when intent of statute clear); *Mayer v. Spanel Intern. LTD.*, 51 F.3d 670, 674 (7th Cir. 1995) (every enacted word need not carry independent force absent strong evidence that at the time of enactment the words were understood as equivalents). In this case, the general statutory canon against redundancy cannot be given controlling weight given the clear intent of OSHA, in the final rule, and the stakeholders, through their comments, during the regulatory process. To do otherwise, in the Secretary's judgment, would render meaningless the most important revision affecting coverage that came out of the rulemaking process, namely the explicit inclusion of the twin concepts of interconnection and co-

location in the definition of "process" and the clear intent that those concepts would determine coverage under the standard.

Moreover, it is simply linguistically inescapable that there is overlap and redundancy among the terms of the standard. *Motiva* involved the interplay between "on site in one location" and the "interconnected" prong of the definition of "process," but the other prong of that definition refers to vessels that are so "located" to create a risk of catastrophic release. Similarly, the appearance of "highly hazardous chemical" in the definition of "process" and in the application provision, and the reference back to the application section in the HHC definition, creates an unavoidable redundancy. So too here, the Secretary cannot reasonably interpret "on site in one location" in a way that has no overlap with "process." Instead, consistent with how courts generally apply the canons of construction, she has settled on an interpretation of the term "on site in one location" that conforms as much as possible to the ordinary meaning of the words and to the standard's overall language, history, and purposes.

### Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of June, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2007-0386; FRL-8321-7]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the Texas State Implementation Plan Regarding a Negative Declaration for the Synthetic Organic Chemical Manufacturing Industry Batch Processing Source Category in El Paso County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Section 172(c)(1) of the Clean Air Act (CAA) requires areas that are not