

March 23, 2016

The Honorable Hal Rogers
Chairman
House Appropriations Committee
H-305, The Capitol
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
House Appropriations Committee
H-305, The Capitol
Washington, DC 20515

The Honorable Tom Cole
Chairman
House Labor-HHS-Education Appropriations
Subcommittee
H-305, The Capitol
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member
House Labor-HHS-Education Appropriations
Subcommittee
H-305, The Capitol
Washington, DC 20515

Dear Chairmen Rogers and Cole, and Ranking Members Lowey and DeLauro:

The undersigned organizations request your support to favorably resolve the Occupational Safety & Health Administration's (OSHA) arbitrary and abrupt change in its Process Safety Management (PSM) "retail facility" interpretation.

Until OSHA issued its PSM "retail exemption" enforcement memo on July 22, 2015, farm supply retailers were always exempt from the PSM regulations. The PSM standards are intended for chemical manufacturers, not agricultural retailers and other retail businesses that sell directly to end users. OSHA's memo is contrary to over two decades of its own enforcement. These facilities already comply with extensive storage, handling, and security regulations for anhydrous ammonia, which is an essential crop nutrient product. These regulations from OSHA, EPA and DHS help ensure a safe and secure work environment for employees and the local community.

The new PSM requirements will place significant time and cost burdens on agricultural retailers. OSHA estimated the cost of compliance at \$2,100 per facility. However, the industry cost estimates per facility are approximately \$30,000 for initial compliance, \$12,000 for annual compliance, and \$18,000 for a three year audit. In the aggregate, it would cost the industry well over \$100 million to come into compliance. As a result of these significant costs, farm supply retailers are seriously considering consolidating facilities, or getting out of the anhydrous ammonia business altogether. This would mean reduced availability of a critical fertilizer product, an increase in the price of food, and ultimately it would hurt American agriculture's ability to produce an abundant and affordable food supply. In certain crops, anhydrous ammonia is the preferred fertilizer source because it contains 82 percent nitrogen and is most economical. Because fewer facilities would carry this product, farmers will be required to travel longer distances to obtain their supply of fertilizer or be forced to purchase significantly larger quantities of alternative sources of nitrogen.

We are grateful that Congress sent OSHA a clear message to withdraw the memo in the "Consolidated Appropriations Act, 2016" with the inclusion of an explanatory statement that prohibited OSHA from using funds to implement or enforce the July 22, 2015 "retail exemption" memo unless OSHA goes through the formal rulemaking process and the Census Bureau creates a new North American Industry Classification System (NAICS) code under either Sector 44 or 45 for farm supply retailers. In response to the congressional directive, OSHA indicated it is unwilling to follow the intent of Congress and withdraw

the memo. Therefore, we ask the Appropriations Subcommittee on Labor, Health, and Human Services, Education, and Related Agencies to include the following language in the statutory text (not just the explanatory statement or report language) of the FY 2017 Appropriations bill:

"The revised enforcement policy relating to the exemption of retail facilities from coverage of the Process Safety Management of Highly Hazardous Chemicals standard (29 CFR 191 0.119(a)(2)(i)) issued by the Occupational Safety and Health Administration on July 22, 2015, shall not be enforced nor deemed by the Department of Labor to be in effect in fiscal year 2017, or future years, until: the Bureau of the Census establishes a new North American Industry Classification System code under Sector 44 or 45 Retail Trade for Farm Supply Retailers; the Secretary of Labor, acting through the Assistant Secretary of Labor for Occupational Safety and Health, has carried out all notice and comment rulemaking procedures and invited meaningful public participation in the rulemaking; and the Secretary, acting through the Assistant Secretary of Labor for Occupational Safety and Health, arranges for an independent third-party to conduct a cost-benefit analysis of such proposed rule, and the Secretary includes such analysis in the publication of the proposed rule."

It is important and necessary for agricultural businesses, and other affected stakeholders, to have an opportunity for public input when agencies make major policy changes to regulations that cause significant, and unexpected burdens. It is critical our industry get an opportunity for proper notice and comment to OSHA's actions. Our organizations respectfully request your support for this important provision that directly impacts jobs, economic growth, and costs American agriculture and consumers.

Thank you for your review and consideration of this request.

Sincerely,

Agribusiness Association of Iowa
AgriBusiness Association of Kentucky
Agribusiness Council of Indiana
Agricultural Retailers Association
Alabama Agribusiness Council
Alabama Farmers Cooperative
American Farm Bureau Federation
Aurora Cooperative
Beachner Grain, Inc.
Birds Island Soil Service
BRANDT
Ceres Solutions, LLP
Central Valley Ag
CHS, Inc.
Cooperative Network
Crop Protection Association of North Carolina
Far West Agribusiness Association
Farmers Cooperative
Farmers Pride
Florida Fertilizer & Agrichemical Association
Frontier Cooperative
Georgia Agribusiness Council
GROWMARK, Inc,
Idaho Cooperative Council, Inc.

Illinois Fertilizer & Chemical Association
Iowa Institute for Cooperatives
Kansas Agribusiness Retailers Association
Kansas Cooperative Council
Land O'Lakes, Inc.
MBG Marketing
MFA Incorporated
MFA Oil Company
Michigan Agri-Business Association
Midwest Farmers Cooperative
Minnesota Crop Production Retailers
Missouri Agribusiness Association
National Association of Wheat Growers
National Association of State Departments of Agriculture
National Corn Growers Association
National Council of Farmer Cooperatives
National Grain and Feed Association
National Sorghum Producers
Nebraska Agri-Business Association
Nebraska Cooperative Council
New York State Agribusiness Association
Ohio AgriBusiness Association
Oklahoma Agribusiness Retailers Association
Oklahoma Agricultural Cooperative Council, Inc.
Oregon Cherry Growers
Premiere Companies
Rocky Mountain Agribusiness Association
South Carolina Fertilizer & AgriChemical Association
South Dakota Wheat Growers
South Dakota Agri-Business Association
South Dakota Association of Cooperatives
Texas Ag Industries Association
The Fertilizer Institute
Willard Agri-Service
Wisconsin Agri-Business Association

cc: House Appropriations Committee Members