

March 23, 2016

The Honorable Thad Cochran  
Chairman  
Senate Appropriations Committee  
Room S128, The Capitol  
Washington, DC 20510

The Honorable Barbara Mikulski  
Ranking Member  
Senate Appropriations Committee  
Room S128, The Capitol  
Washington, DC 20510

The Honorable Roy Blunt  
Chairman  
Senate Labor-HHS-Education Appropriations  
Subcommittee  
Room S128, The Capitol  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Senate Labor-HHS-Education Appropriations  
Subcommittee  
Room S128, The Capitol  
Washington, DC 20510

Dear Chairmen Cochran and Blunt, and Ranking Members Mikulski and Murray:

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  
Central Valley Ag  
Ceres Solutions, LLP  
CHS, Inc.  
Cooperative Network  
Crop Protection Association of North Carolina  
Far West Agribusiness Association  
Farmers Cooperative  
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  
North Dakota Agricultural Association  
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  
Premier 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: Senate Appropriations Committee Members