

November 19, 2015

The Honorable Thad Cochran
Chairman
Committee on Appropriations
U.S. Senate
Washington, D.C. 20510

The Honorable Hal Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Roy Blunt
Chairman
Subcommittee on Labor, HHS, Education
and Related Agencies
U.S. Senate
Washington, D.C. 20510

The Honorable Tom Cole
Chairman
Subcommittee on Labor, HHS, Education
and Related Agencies
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Richard Shelby
Chairman
Subcommittee on Commerce, Justice, Science
and Related Agencies
U.S. Senate
Washington, D.C. 20510

The Honorable John Culberson
Chairman
Subcommittee on Commerce, Justice, Science
and Related Agencies
U.S. House of Representatives
Washington, D.C. 20515

Dear Messrs. Chairmen:

On behalf of the undersigned agricultural organizations, we are writing you to request the inclusion of provisions in the FY 2016 Omnibus Appropriations Bill to prevent the Occupational Safety and Health Administration (OSHA) from enforcing an unlawful Process Safety Management (PSM) retail exemption memorandum issued this summer.

As you are probably aware, on July 22, 2015, OSHA issued a memorandum revising the Agency's 1992 interpretation of what constitutes a "retail facility" under its PSM regulations. Now agricultural retail facilities (i.e., farm supply retailers) will no longer be exempt from PSM even though more than 50 percent of their sales are to farmers and other end-users. Instead, facilities are exempt only if they use a North American Industry Classification System (NAICS) code under Sector 44-45 Retail Trade. As a result, it is estimated that 3,800 agricultural retail facilities will now be subject to PSM at an estimated cost for design and implementation at \$27,500 per facility. These cost estimates do not include physical upgrades to facilities or ongoing annual costs. The resulting cost on the industry is well over \$100 million. OSHA's cost estimates are \$2,160 per facility, which is off by a factor of at least 10. The enormous financial costs imposed by new PSM regulations on these retail facilities and the adverse economic impact on the agricultural industry significantly outweigh any benefits.

These enormous costs will likely lead to the closure of many facilities handling anhydrous ammonia, an important crop nutrient product for many commodities. It will also significantly increase the distance farmers are required to drive to pick up and transport the product to their farms. In some areas, agricultural retailers may decide to stop carrying anhydrous ammonia, causing farmers to either find alternative suppliers or purchase other types of fertilizer products in higher quantities in order to obtain the same amount of nitrogen content for their crops.

There have been Senate and House hearings on this issue along with several congressional letters submitted to Secretary of Labor Thomas Perez urging OSHA to immediately rescind the enforcement memorandum and begin a formal rulemaking process to better assess the impact of the change and allow for adequate stakeholder input. To date, the agency has ignored all congressional and industry stakeholder letters. In the OSHA memorandum, Executive Order (EO) 13650 is cited as a reason for the revision to long-standing regulatory policy. EO 13650 was issued following the West Fertilizer Co. accident that took place in West, Texas, on April 17, 2013, involving ammonium nitrate fertilizer. While anhydrous ammonia was stored on site, its presence caused no known issues outside the plant footprint as reported by the Texas Department of Public Safety. OSHA has existing regulations regarding the storage and handling of anhydrous ammonia in 29 CFR 1910.111. If this product were an issue, it would make the most sense for OSHA to update the existing applicable regulations to the 2014 industry consensus standards. Instead, OSHA has decided to arbitrarily revoke the “retail exemption” through a memorandum it claims is a non-binding document with no new obligations on facilities.

The NAICS was developed as the standard for use by federal statistical agencies in classifying business establishments for the collection, analysis and publication of statistical data related to the business economy of the U.S. NAICS codes were not developed to meet the needs of regulatory applications. However, certain federal agencies such as OSHA are now using these standards to try to capture certain types of agri-businesses such as agricultural retailers under regulations designed for manufacturers, even though it does not fit the original intent of the laws established by Congress. Because there has never been a good definition under the NAICS for agricultural retailers, many retailers have been using code # 424910 as the closest description of products they sell to farmers and other end users. There is currently no code classification under 44-45 that adequately covers “Farm Supply Retailers” and the sale of farm supplies such as feeds, fertilizers, agricultural chemicals and plant seeds to farmers and other end users. The NAICS needs to be revised to better fit the actual business carried out by these agricultural retailers.

We urge your support for these important provisions for inclusion in the FY 2016 Omnibus Appropriations Bill, which will help ensure the Administration follows the original scope of laws established by Congress. Thank you for your review and support for this important request!

Sincerely,

Agribusiness Association of Iowa
AgriBusiness Association of Kentucky
Agribusiness Council of Indiana
Agricultural and Food Transporters Conference
Agricultural Retailers Association
Alabama Agribusiness Council
American Farm Bureau Federation
Cooperative Network
Far West Agribusiness Association
Florida Fertilizer & Agrichemical Association
Georgia Agribusiness Council
Iowa Institute for Cooperatives
Illinois Fertilizer & Chemical Association
Kansas Agribusiness Retailers Association
Kansas Cooperative Council

Michigan Agribusiness Association
Minnesota Crop Production Retailers
Missouri Agribusiness Association
Montana Agricultural Business Association
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Corn Growers Association
National Council of Farmer Cooperatives
National Sorghum Producers
National Sunflower Association
Nebraska Agribusiness Association
Nebraska Cooperative Council
New York State Agribusiness Association
Ohio AgriBusiness Association
Oklahoma Agribusiness Retailers Association
Rocky Mountain Agribusiness Association
South Carolina Fertilizer & Agrichemicals Association
Southern Crop Production Association
South Dakota Agri-Business Association
Tennessee Agricultural Production Association
Texas Ag Industries Association
The Fertilizer Institute
US Canola Association
Wisconsin Agri-Business Association
Washington State Council of Farmer Cooperatives
Western Plant Health Association
Wyoming Ag-Business Solution