March 23, 2016

The Honorable Hal Rogers Chairman 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 Nita Lowey Ranking Member House Appropriations Committee 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 North Dakota Agricultural 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 **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: House Appropriations Committee Members