

Congress of the United States
Washington, DC 20515

October 22, 2015

The Honorable Thomas Perez
Secretary
United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Perez:

We are writing to you regarding the July 22, 2015 memorandum revising the Agency's 1992 interpretation of what constitutes a "retail facility" under OSHA's Process Safety Management (PSM) program. Recently, we have heard from a number of constituents concerning the interpretive change regarding the PSM regulations for anhydrous ammonia and the retail exemption. We appreciate your attention to this matter and look forward to working towards a solution to the challenges faced with this change.

In the memorandum, Executive Order (EO) 13650 is cited as the reason for the revision to long standing policy. EO 13650 was the result of the West Fertilizer Co. incident that took place in West, Texas on April 17, 2013. As you are aware, ammonium nitrate was the product involved in the explosion at the West facility. While anhydrous ammonia was present at the West facility, its presence caused no known issues. In fact, according to an April 20, 2013 report from the Texas Department of Public Safety "no ammonia was detected in the air outside the plant footprint." Had anhydrous ammonia been an issue, it would be logical that OSHA update the storage and handling of anhydrous ammonia regulations in 29 CFR 1910.111. Agricultural retailers are not exempt from this regulation. Instead, the agency has decided to arbitrarily revoke the 'retail exemption' to increase the scope of the PSM program to include agricultural retail facilities.

Working with stakeholders is a key point made throughout the EO. Typically, stakeholders use the notice and comment period during a rulemaking process to voice concerns and opinions regarding a proposed rule. In this case, the memorandum rescinding policy that has stood for over 23 years did not provide an appropriate avenue for stakeholders to provide their comments.

Additionally concerning, is the cost that agricultural retailers estimate will be incurred in order to bring facilities impacted into compliance. We would strongly encourage the agency to reconsider and revise the estimate of \$2,100 per facility. After hearing from impacted constituents, we do not believe this to be realistic. Industry estimates are in excess of \$20,000 per facility, resulting in total compliance costs for the industry to easily exceed the \$100,000,000 threshold used by the OMB when determining whether a regulatory action is "major" and thereby requiring review.

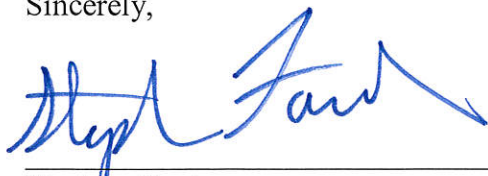
We all support efforts to improve safety at agricultural retail facilities. This begins with collaboration between stakeholders and OSHA and should take into account the safety, cost, and

feasibility of such a change. Industry initiatives, such as the ResponsibleAg program, should also be taken in to consideration. Additionally, we understand that [The OSHA, EPA, and Fertilizer Safety and Health Partners Alliance](#) between OSHA, EPA, The Fertilizer Institute and the Agricultural Retailers Association was signed in February 2015. This Alliance would be an obvious place for OSHA to start that collaboration between stakeholders.

For all of the aforementioned reasons, we would ask that OSHA immediately rescind the July 22 memorandum and begin a formal rulemaking process to better assess the impact of the change and allow for adequate stakeholder input.

Thank you for your time and attention to this important matter. We look forward to receiving your response addressing our concerns.


Sincerely,



Stephen Fincher
Member of Congress



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Member of Congress



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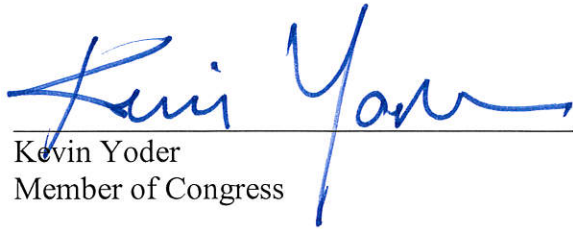
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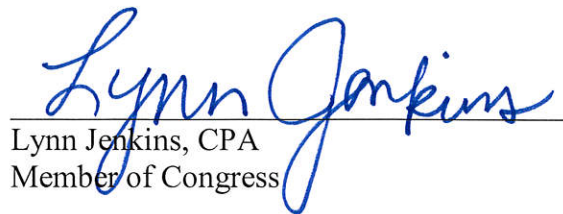
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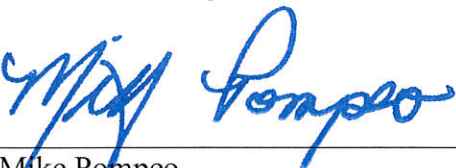
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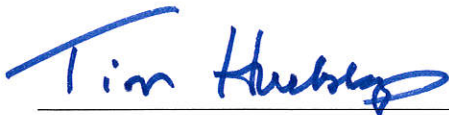
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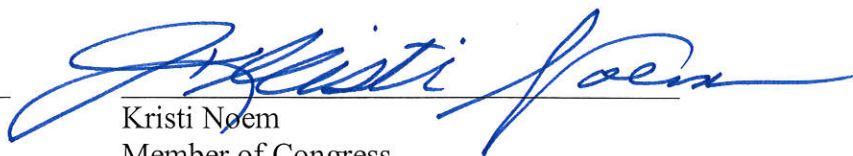
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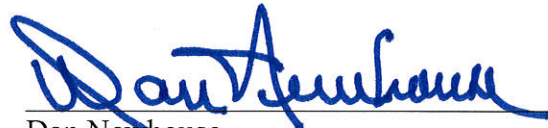
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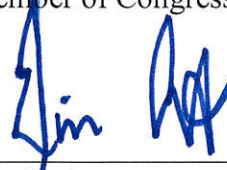
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