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1/27/97

February 7, 1997

Mr. Alan I. Roberts, Administrator  
Research & Special Programs Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**RE: PETITION FOR RECONSIDERATION OF DOCKET HM-200**

Dear Mr. Roberts:

As per 49 CFR 106.35, please accept this petition for reconsideration of HM-200 (*62 Federal Register 1208*), which in its present form will have a serious economic and operational impact on the agricultural industry in the United States.

***Statement of Complaint***

In the preamble of the HM-200 rule, RSPA acknowledges that it received "more than 500 comments from farmers and agricultural supply businesses who expressed concern that this rule would prohibit states from granting exceptions for *farmers*." In the final rule, RSPA provided an exception from the HMR for farmers who transport agricultural products between fields of the same farm. We appreciate this action by RSPA, as it will provide some relief for farmers. However, we know that many of the 500 comments to RSPA also expressed concern about the impact of the rule on *ag retailers* as well. RSPA failed to acknowledge the concerns of the retail segment of the industry, whose operations have a direct impact on the farmer, and whose transport of materials is often identical to that of the farmer.

We are also aware that RSPA was directed in a conference report accompanying the FY 1997 DOT appropriations bill "to give serious consideration to establishing an agriculture exception consistent with similar exemptions already granted by the department."

Finally, Dr. D.K. Sharma received a "Dear Colleague" letter signed by 48 Congressmen and Senators that urged RSPA to "carefully consider the concerns of the (ag) industry" when formulating this rulemaking.

Despite all the directives to do so, after evaluating the language in the final HM-200 rule we are deeply disappointed that RSPA has failed to provide adequate relief from the HMR for both farmers and retailers. The minimal exceptions granted in Section 173.5 will do little to facilitate the efficient and historically safe movements of ag inputs from retail to farm, and will take a devastating economic toll on the agricultural industry.

***Final Rule Unreasonable, Impractical***

HM-200 effectively negates state exceptions for ag retailers and farmers from the HMR. In most cases, these exceptions have existed for decades. Because many farmers and ag businesses have never had to comply with the HMR, they are unaware of the implications of applying these federal rules to movements of agricultural products from retail-to-farm.

This rule is unreasonable and impractical from several standpoints.

1. The rule is effective October 1. Beginning next fall and extending into the spring, it will cause tremendous confusion for farmers, ag businesses and state officials who must now deal with a federal law that dictates the application of complicated hazardous materials regulations on local, rural shipments of agricultural inputs. On average, the bulk of agricultural product shipments occur during a 45-day period when planting commences, and periodically in the fall when some fertilizer is applied. Farmers and ag businesses do not transport agrichemicals every day of the year. Forcing them to comply with this complex regulation for a few brief periods during the year is not justified and will only result in confusion and misunderstanding as each planting season rolls around--and we don't see it getting any easier as time goes on.
2. Although farmers received some relief from the HMR for between-field movements of DOT regulated agrichemicals, agricultural retailers were dealt a massive blow when RSPA completely ignored their similar need for relief when delivering these same products to the farm, or when the farmer himself picks up these products at the retail site and takes them to the farm.

Based on valid industry estimates, it will cost a typical agricultural retail facility **\$12,300** annually to comply with the mandates of HM-200. (See Attachment A for analysis of costs.) In the midwest alone, the number of ag retail facilities affected exceed 5,000 in number. **At \$12,300 per facility, that's a cost of \$61,500,000 per year to comply with HM-200, and that's only in the midwest** (i.e. Illinois, Indiana, Iowa, Wisconsin, Minnesota, Ohio). These are costs that will eventually be passed on in terms of higher costs of products and services to the farmer. The farmer, however, cannot pass along these costs due to the ag marketing structure. The added expense of complying with HM-200 will ultimately contribute to lower net farm income nationwide, without any significant increase in public safety.

3. Although the goal of HM-200 is uniformity, state officials in agricultural states will still be required to enforce the HMR only on certain types of agricultural movements, even though the movement of agricultural products--whether from retail-to-farm or between fields--will remain similar in their makeup. In essence, the same quantities and types of agricultural products will be on trucks leaving retail sites and on trucks traveling between fields.

We believe that for purposes of uniformity and enforcement, it makes more sense to allow exceptions from the HMR for both retail-to-farm and farm-to-farm shipments, whether the ag products are picked up by the farmer or delivered by the retailer. The excellent safety record of the ag industry merits this exception.

We believe HM-200 to be an unreasonable burden on the agricultural industry, impractical in terms of compliance and enforcement, and unnecessary based on the excellent safety record for retail-to-farm and farm-to-farm shipments of ag products. We stand behind our safety record and would welcome contradictory data from RSPA that proves that these movements of ag products pose an unreasonable threat to public safety.

We, the undersigned, petition RSPA to reconsider the impact that HM-200 will have on farmers and agricultural supply businesses. We urge RSPA to revise 49 CFR, Section 173.5 to incorporate language that will provide an exception from the HMR for both farmers and retailers who transport agricultural products from retail-to-farm, between fields, and from the farm back to the local source of supply.

We offer our knowledge and expertise to you in this endeavor, and would welcome the opportunity to sit down with RSPA and create a workable regulation--one that recognizes the unique needs of the agricultural industry, streamlines enforcement and provides a framework in which we can continue to safely and efficiently provide farmers with the tools they need to feed the U.S. and the world.

Sincerely,

Agribusiness Association of Iowa  
Agricultural Retailers Association  
Alabama Farmers Cooperative, Inc.  
Alliance of State Agri-Business Assoc.  
American Farm Bureau Federation  
American Soybean Association  
CF Industries, Inc.  
Countrymark Coop, Inc.  
Farmland Industries, Inc..  
Georgia Agribusiness Council  
Gold Kist, Inc.  
GROWMARK, Inc.  
Illinois Farm Bureau  
Illinois Fertilizer & Chemical Association  
Indiana Farm Bureau, Inc.  
Indiana Plant Food & Ag Chemical Assoc.  
Iowa Farm Bureau Federation  
Iowa Institute for Cooperatives  
Kansas Fertilizer & Chemical Association  
Kansas Grain & Feed Association  
Louisiana Ag Industries Association  
Michigan Agribusiness Association  
Minnesota Crop Production Retailers  
Mo-Ag Industries Council  
Montana Agricultural Business Association  
National Association of Wheat Growers

National Cotton Council  
National Council of Farmer Cooperatives  
Nebraska Cooperative Council  
Nebraska Fertilizer & Ag-Chemical Inst., Inc.  
New England Council for Plant Protection  
Ohio Agribusiness Association  
Ohio Farm Bureau Federation  
Oklahoma Fertilizer & Chemical Association  
Rocky Mountain Plant Food & Ag Chem Asc.  
SF Services, Inc.  
South Dakota Farm Bureau  
South Dakota Fertilizer & Ag Chemical Asc.  
Southern States Cooperative  
Tennessee Farmers Cooperative  
The Andersons  
United Suppliers, Inc.  
Universal Cooperatives, Inc.  
WILFARM L.L.C.  
Wisconsin Agri-Service Association, Inc.  
Wyoming Agri-Business Association

## ATTACHMENT A

### Cost to Retail Ag Facilities to Comply with HM-200

- **Manpower:** 10 additional minutes per load to evaluate shipments of agricultural products to determine applicability to the HMR.

On average, during spring season each agrichemical facility processes 100 loads per day of agricultural products (both packaged and in solution), which includes loads picked up by the farmer and loads delivered by the retailer.

100 loads per day x additional 10 minutes = 1000 minutes ÷ 60 min/hour =  
16.666 additional manhours per day spent on compliance.

16.666 hours x \$14 per hour average salary for personnel = \$233.333 per day  
for additional manhours to evaluate loads for compliance.

\$233.333 per day x 45 days of peak movement of agricultural products =  
**\$10,500** (rounded). This does not take into account movements made during  
off-season.

- **Placards:** Assume 25% of the 100 loads per day will require placarding.  
Most inexpensive placard is .35 cents.  $.35 \times 4 = \$1.40$  per load.  
25 loads per day x \$1.40 = \$35 per day. \$35 x 45 days of spring season =  
**\$1575.**

- **Shipping Papers:** It is highly unlikely that we can use "laminated" shipping papers as RSPA indicates in the preamble. Products, package sizes and shipping descriptions for ag products change too often to make pre-printed papers feasible. However, assuming we can generate some type of shipping paper at .05 cents per page, the costs are as follows: 100 loads per day x .05 for shipping paper = \$5.00 x 45 days of spring season = **\$225.** This does not take into account unknown cost for software and software maintenance to keep the descriptions up to date.

### MINIMUM ANNUAL COST TO COMPLY FOR AG BUSINESSES TO COMPLY WITH HM-200:

\$10,500 in manhours  
1,575 in placards  
225 in shipping papers (this cost likely to be substantially more)

**\$12,300** annually for each retail ag facility--with thousands of facilities in the U.S.,  
the economic impact may be in the hundreds of millions of dollars.

Source: Data provided by management personnel at retail agribusiness facilities.