



Written Remarks of

**Andy O'Hare
Vice President, Public Policy
The Fertilizer Institute**

Senate Committee on Homeland Security and Governmental Affairs

Roundtable on

Examining the Chemical Facility Anti-Terrorism Standards Program

June 12, 2018

Good morning, Chairman Johnson, Ranking Member McCaskill, and members of the Committee.

My name is Andy O'Hare. I am Vice President of Public Policy for The Fertilizer Institute (TFI). TFI represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

TFI represents companies that include large multi-billion dollar production facilities and thousands of small agriculture retailers, the latter of whom interact directly with American farmers. Agricultural retail facilities sell a variety of products to farmers, including fertilizers such as ammonia and ammonium nitrate, and often have just 5-10 employees at a location. Overall, the U.S. fertilizer industry generates more than \$154 billion in economic benefit annually and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs.

Under the Chemical Facility Anti-Terrorism Standards, or CFATS program, the Department of Homeland Security identifies chemicals which present potential security concerns. Included on this list are a few fertilizers, including ammonia, ammonium nitrate, sodium nitrate and potassium nitrate.

The safe and secure handling of fertilizers is a high priority for TFI and its members. TFI and many of our members actively participate in and sponsor numerous safety initiatives,

including ResponsibleAg, TRANSCAER, and the Advanced Tank Car Collaborative Research Program.

ResponsibleAg -- which is a joint effort between TFI and the Agricultural Retailers Association -- exists to enhance compliance by agricultural retailers with a variety of federal safety, security, environmental and transportation regulations, including those administered by the Department of Homeland Security (DHS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the Department of Transportation (DOT). Each participating facility receives a federal regulatory compliance assessment. Any noted compliance deficiencies must be corrected by the facility before it may be designated as certified under the program. The assessments are then conducted every three years.

To date, over 2,500 facilities are registered with the ResponsibleAg program, over 1000 of these facilities have been certified, 185 auditors have been trained, and almost 2,000 audits have been completed. We are very proud of this industry-led compliance program. Periodically, we lead a tour of the training program and facility for federal and state officials. We welcome you and your staff to visit anytime.

Regarding the CFATS program, it provides a good framework to ensure chemical facilities take the appropriate steps necessary to protect themselves and the security of the communities around them. Our members support the program, recognize its importance, and we support a multi-year reauthorization of the program.

DHS has estimated that over 3,500 facilities are presently subject to the program and TFI estimates that this includes as many as 1,500 fertilizer manufacturers and agricultural retail facilities, with retail facilities accounting for the overwhelming majority. The retail facilities are generally located in rural communities, interface directly with farmers and employ a very small number of individuals. While we are largely satisfied with the CFATS program, we believe that implementation of the program would benefit from a bit more transparency between DHS and the regulated community. For example, DHS recently completed a process for reclassifying facilities. As a result, some TFI facilities were reclassified into a higher risk classification. What was not clear to TFI members, was the underlying basis for the new categorizations. We believe this should be a more transparent effort between DHS and individual facilities, allowing for a more thorough discussion of the security risks posed by individual facilities. This could ultimately bolster the quality of site security plans. Nevertheless, the relationship between TFI members and DHS is generally very productive, and we see this as an easily remediable communication issue.

Another example of the need for increased transparency is the way DHS utilizes Appendix A, the list of chemicals potentially subject to the CFATS program. TFI and its members have encountered some confusing rulemaking interpretations, particularly how the program addresses ammonium nitrate and ammonium nitrate mixtures. The uncertainty regarding which mixtures are or are not subject to CFATS has been the subject of many discussions, but has not been resolved to the satisfaction of TFI members, owing to the limited explanations received from DHS. We believe these uncertainties could be remedied through a comprehensive notice and comment rulemaking.

We are also sensitive to the way facility-specific information contained in site security plans is shared with the public. We believe the facility owner or operator should retain the discretion to determine how this information is shared.

Lastly, regarding the personnel surety program, we don't believe this obligation to check employee records against the terror screening database should be applied to those facilities in risk groups Tier 3 and Tier 4. This would be an exponential expansion of the program from the less than 200 facilities presently covered to more than 3,500. Many of the 1,500 or so agricultural retail facilities are not equipped to implement this program at this time. TFI recommends that Congress commission a study from the Government Accountability Office of the merits of expanding this program beyond the Tier 1 and Tier 2 facilities that are presently covered.

Finally, and a bit outside the scope of CFATS, is an obligation for DHS to create a track and trace program for the sale and purchase of ammonium nitrate. This decade old directive from Congress has not been implemented, and DHS last year commissioned a study by the National Academy of Sciences (NAS) to more broadly explore the use of improvised explosive chemicals and make recommendations on how they should be managed in commerce. The NAS issued a report late in 2017, identifying 28 chemicals for further consideration by DHS. One such chemical is urea ammonium nitrate, a widely used liquid fertilizer. TFI believes that this product was mischaracterized as being a high-risk concern—as it has never been used to make an explosive. TFI believes that DHS should focus their limited resources on those chemicals that have historically be used to make improvised explosive devices.

Thank you again for the opportunity to be with you all this morning. I am happy to answer any questions.