



February 26, 2018

VIA ELECTRONIC SUBMISSION

DHS/NPPD/IP/ISCD
Attn: 16700029
245 Murray Lane, SW
Mail Stop 0610
Arlington, VA 20528-0610

**RE: Chemical Facility Anti-terrorism Standards Program Personnel Surety Program;
Proposed Rule and Request for Comment (Docket Number: DHS-2017-0037)**

Dear Sir or Madam:

The Fertilizer Institute (TFI) is pleased to provide the Department of Homeland Security (DHS) with these comments addressing the above-identified proposed rule (hereinafter, “Personal Surety Program-Information Collection Request” or “PSP ICR”), which was published in the Federal Register on December 27, 2017 (82 Fed. Reg. 61,312). Many TFI members are subject to the Chemical Facility Anti-terrorism Standards (CFATS) program; consequently, TFI has an interest in the subject and the potential impact of this proposed rule.

Statement of Interest

TFI represents the nation’s fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. TFI members provide nutrients that nourish the nation’s crops, helping to ensure a stable and reliable food supply. TFI’s full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information and public communication programs.

TFI’s Comments on the PSP ICR

I. TFI Is Concerned with Some of the ICR Assumptions

TFI appreciates the opportunity to review the PSP ICR and questions a few of the assumptions used as the foundation to quantify the impact an expanded PSP program to include Tier 3 and Tier 4 facilities would have on the regulated community. Several assumptions are potentially problematic, including assuming that:

- The burden will be highest for facilities that are at risk for a chemical release rather than from theft and diversion
- The average Tier 3 or 4 facility has 106 employees; and
- It takes five minutes to vet an individual personnel surety record.

While these assumptions may be valid, it is not clear upon what information they are based. The assumptions, for example, would not be appropriate for a typical agricultural retail facility, which generally has 5 and no more than 10 employees. Relatedly, a large percentage of the presumed 3,700 Tier 3 and Tier 4 facilities could be agricultural retail facilities, calling into question some of the fundamental assumptions in the ICR and associated cost estimates. Moreover, the five-minute time interval for vetting an individual against the terror database does not appear to include the additional time necessary to notify employees of the PSP requirement, obtain their consent, and acquire the necessary personal information to compare against the database. Lastly, the ICR does not appear to account for the burden associated with vetting part-time or seasonal employees or contractors that may come on site and be in proximity to terror sensitive areas.

Owing to the likelihood that a significant percentage of the 3,700 facilities potentially subject to new PSP requirements may be agricultural retail facilities, TFI encourages DHS to do a more thorough breakdown of these facilities to determine whether the average employment numbers are correct, as this single assumption drives the total cost of implementing the program at Tier 3 and 4 facilities.

II. TFI Believes that Additional Program Assessment Information Is Necessary

TFI is aware that the Government Accountability Office is presently conducting an assessment of the CFATS program on behalf of the Senate Homeland Security Committee in anticipation of reauthorization of Public Law (PL) 113-254, "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014." We understand that the report, being done pursuant to Section 3 of PL 113-254, is reviewing many aspects of the CFATS program, including, perhaps, implementation of PSP for Tier 1 and Tier 2 facilities. If in fact GAO is reviewing PSP program implementation and the associated burden on the regulated community, we believe this information may be invaluable to the department when assessing and tailoring implementation of PSP for Tier 3 and 4 facilities. If, however, the GAO report does not encompass a review of PSP implementation to date, we strongly urge DHS to undertake such an analysis.

III. TFI Believes DHS Should Postpone Expanding the PSP Program

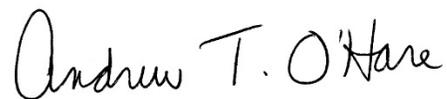
As noted above, TFI believes that the potential burden of imposing a PSP program on Tier 3 and Tier 4 facilities may be informed by the experiences to date by Tier 1 and 2 facilities. Until such an analysis has been conducted and the findings used to inform this PSP ICR, we believe the department should withhold expanding the program. Further, Congress went to the unusual effort of including Section 3 in the law authorizing CFATS, which stipulates that the

department conduct of number of independent assessments of CFATS programs, including implementation of the whistleblower protections and the expedited approval program. We believe that similar attention should be afforded the PSP program.

IV. Conclusion

TFI appreciates the opportunity to provide comments on this proposal. Please do not hesitate to reach out to me with any questions regarding the perspectives of the association on this matter. I may be reached at (202) 515-2704 or aohare@tfi.org.

Sincerely,

A handwritten signature in black ink that reads "Andrew T. O'Hare". The signature is written in a cursive, slightly slanted style.

Andrew T. O'Hare, CAE
Vice President, Public Policy

Cc: Ms. Amy Graydon, DHS