

TESTIMONY OF DONALD R. THOMAS
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My name is Donald R. Thomas. I am the Director of Technical Service and Quality Programs for CF Industries, Inc., a position I have held since CF Industries acquired Terra Industries, Inc. in 2010. Unlike Mr. Hopkins, the accent you hear is indeed a Mississippi accent. I have been in the fertilizer business and specifically in the ammonium nitrate industry for 27 years, and have worked at the ammonium nitrate facilities in Yazoo City, Mississippi since 1986. I hold a security clearance with the Department of Homeland Security and have served as a technical representative of The Fertilizer Institute ("TFI") to DHS on the subject of ammonium nitrate security, storage and handling since 2004.

Throughout my career working with ammonium nitrate, I have seen the marketplace for this very specialized nitrogen fertilizer evolve. Most recently, however, I have seen the security regulation of ammonium nitrate contribute significantly to the decline in U.S. demand for ammonium nitrate. Because I have worked closely with DHS on its regulations, I would like to describe the regulations briefly and also to explain why they do not impede imports.

There are two sets of DHS regulations that have had a significant impact on the U.S. AN market in recent years. The first set is known as the Chemical Facility Anti-Terrorism Standards (or "CFATS" for short). These rules went into effect in 2007 to regulate the security of so-called "high-risk" chemical facilities. CFATS covers a broad range of potentially hazardous chemicals, including ammonium nitrate. Under these

rules, any facility possessing more than 2000 lbs of covered ammonium nitrate (including agricultural grade ammonium nitrate) must submit detailed information to DHS to allow them to conduct a “top screen.” As such, AN producers, distributors and retailers would have to submit top screen information to DHS. DHS reviews this information, and if it finds the facility to be a high-risk facility, it then requires the facility to meet additional security requirements, including the requirement to conduct a security vulnerability assessment and the preparation of a site security plan. In practice, this has meant that some agricultural retailers that might well have carried more than 2000 lbs of AN in the past have simply chosen to no longer offer ammonium nitrate to their customers to avoid bearing the costs and risks associated with carrying AN in their product portfolio. These costs have included consultants to develop facility security plans, physical perimeter security improvements, physical inventory monitoring and additional staff to manage their ammonium nitrate inventory and sales. As a result, many distribution and retail outlets have chosen to exit the AN business.

The second set of DHS rules is specific to ammonium nitrate and implements the Secure Handling of Ammonium Nitrate Act, passed by Congress in 2008, to “regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.” After a public comment period and several years of discussion both in the marketplace and in technical meetings, many of which I have participated in, DHS issued its proposed notice of rulemaking in 2011, announcing a draft Ammonium Nitrate Security Program. In particular, the proposed DHS regulations would require (1) registration by sellers and purchasers of AN; (2) verification of purchaser registration prior to completing a sale or

transfer of AN; (3) AN facilities to maintain records of each sale or transfer of AN for a two-year period; (4) reporting of lost or stolen AN; (5) audits and inspections of registered facilities; and (6) establish an appeals and penalties process. DHS has indicated that it presently intends to issue its Final Rule in December 2013. There are a number of significant questions to be resolved in the Final Rule, such as exactly who in the supply chain is covered by the registration and recordkeeping requirements, and under what circumstances. This is creating a great deal of uncertainty as to what the impact will be. For example, the proposed rule is not clear about whether a truck driver who transports ammonium nitrate from seller to purchaser will also be subject to the various requirements. Or whether a customer purchasing multiple shipments per day or week will have to be vetted or processed through the DHS registration system each time an order is placed, or only periodically. Also creating uncertainty is the DHS proposed "mixture rule." Under this mixture rule proposed by DHS, any blend of fertilizers containing 30% by weight or more of ammonium nitrate will also be regulated as ammonium nitrate and subject to the entire rule. Therefore, facilities who have historically handled only modest quantities of AN or blended fertilizers containing 30% AN would be subject to the new DHS regulations. The scope of the AN Security Program, once finalized, is likely to again affect the number of distributors and dealers that are willing to offer or supply ammonium nitrate to America's farmers.

While the full impact of a finalized DHS rule for the regulation of Ammonium Nitrate Security is not clear, what is clear is that the major regulatory burdens in the ammonium nitrate supply chain affect those who produce, store, distribute and purchase ammonium nitrate within the United States. As explained above, CFATS

affects facilities storing more than 2000 lbs. of HDAN, such as producers and retailers, and the proposed Ammonium Nitrate Security Program will require registration by buyers and sellers at the wholesale and retail levels. In contrast, the existing U.S. Coast Guard regulations that affect importers have been in operation since 2003 and only affect ammonium nitrate transported by water. Security regulations or costs are not preventing imports from entering the market. Rather, the increased costs and burdens associated with current and proposed security regulations are and will continue to be borne within the United States predominantly by domestic producers, distributors, retailers and purchasers, not by importers.

Thank you for the opportunity to appear today. I would be pleased to answer any questions you may have.