

June 15, 2022

Melissa R. Bailey
Associate Administrator
Agricultural Marketing Service, USDA
1400 Independence Ave SW
Washington, DC 20250

RE: USDA Agricultural Marketing Service request for public comment; “Access to Fertilizer: Competition and Supply Chain Concerns”; Docket Number AMS-AMS-22-0027; Federal Register Pages 15191-15194

Dear Associate Administrator Bailey:

On behalf of North Dakota Farmers Union (NDFU), thank you for the opportunity to comment on competition and supply chain concerns in fertilizer markets. NDFU is the largest general farm organization in the state, representing more than 50,000 farm, ranch and member families. Over the last 12 months, sharp increases in fertilizer prices and ongoing supply chain constraints have created major challenges for North Dakota farmers. Adequate competition in fertilizer markets is essential for ensuring fair prices and reliable access for farmers, and to ensure domestic and global food security.

Consolidation in the Fertilizer Industry

Fertilizers, especially nitrogen, phosphorus, and potassium (potash), are critical agricultural inputs. High fertilizer prices harm family farmers and ranchers and can also impact consumers to the extent that higher input costs can result in increased food costs. While fertilizer prices and availability are partially determined by the interaction of supply and demand¹, the fertilizer industry is also marked by extremely high concentration. The domination of the fertilizer industry by a handful of monopolies and oligopolies, as well as anticompetitive behavior among these firms, is well documented.²

A report³ from the American Antitrust Institute in 2013 explained the issues of prices, profits, and capacity in the fertilizer industry as follows:

Fertilizer producers exercise market power through some combination of setting prices and controlling production. Dominant fertilizer manufacturers may well have attempted

¹ “Fertilizer Use and Price, Summary Findings,” *USDA Economic Research Service (ERS)*, Last Updated October 30, 2019. <https://www.ers.usda.gov/data-products/fertilizer-use-and-price/summary-of-findings/>

² C. Robert Taylor and Diana L. Moss, “The Fertilizer Oligopoly: the case for global antitrust enforcement,” *The American Antitrust Institute*, 2013. <https://www.antitrustinstitute.org/wp-content/uploads/2013/10/FertilizerMonograph.pdf>

³ *Ibid.*

to maintain collusive prices for several quarters by reducing production to match consumption, rather than to competitively lower prices to induce higher sales volume. The decrease in prices 2009 to 2010 may have served not just to restore sales quantities, but also to dissuade smaller firms from expanding or new firms from entering the market. Production cutbacks and extended mine shutdown could well have been designed to boost prices after they dipped. Later empirical analysis of price-cost margins supports the notion that dominant producers engaged in coordinated price setting in fertilizer markets.

This report provides a helpful overview of dynamics that have existed in the fertilizer industry. Concentrated market structures and the risk of collusive behavior remain today.

Fertilizer prices, supply chain shocks and concentration concerns

Fertilizer availability and high prices are major issues for farmers this spring. Retail fertilizer prices have reached record highs in 2022 for nitrogen, phosphorus, and potassium. Prices were already considerably higher in 2021 compared to the previous year, and they have continued to rise in 2022. Compared to 2021 prices, as of late April 2022, 10-34-0 is 48% more expensive, MAP is 54% higher, DAP is 68% more expensive, UAN28 is 81% higher, UAN32 is 87% more expensive, urea is 99% higher, potash is 103% higher and anhydrous is 117% more expensive.⁴ Higher crop prices are helping to offset the increased cost of fertilizer for American producers, but there is no guarantee that high crop prices will hold.

Causes of current price increases include supply shocks from multiple causes, including the ripple effects of the COVID-19 pandemic, Russia's invasion of Ukraine, weather events, other supply chain disruptions, and trade restrictions. Excessive market power and lack of competition in the fertilizer industry likely contributes to pricing and availability challenges as well.

NDFU's members have expressed several concerns regarding the high fertilizer prices. High costs of production and unfavorable planting conditions have forced many farmers to alter their cropping plans and seed selection. Furthermore, we anticipate prevented planting claims to be extremely high this crop year, lowering total fertilizer use across the state. However, many retailers are unable to cancel contracts for undelivered fertilizer with their suppliers. As a result, many farmers will be forced to apply highly priced fertilizers this fall or next season. This will not only elevate cost of production next growing season, but it also artificially inflates current demand for fertilizer.

Potential solutions

Despite convincing evidence of anticompetitive pricing of fertilizer and highly concentrated market structures, most antitrust authorities have shown scant interest in investigating the fertilizer industry. Public and private enforcement, and reconsideration of certain antitrust exemptions may be warranted. NFU views this request for comment on fertilizer as a welcome and helpful start.

⁴ Russ Quinn, "DTN Retail Fertilizer Trends: MAP fertilizer price index ties all-time record," *DTN Progressive Farmer*, April 27, 2022. https://www.dtnpf.com/agriculture/web/ag/crops/article/2022/04/27/map-fertilizer-price-index-ties-time?itm_source=parsely-api

We urge the federal government to take steps toward increasing fertilizer supply in the U.S. NDFU supported USDA's announcement of \$250 million in grants to support new, independent fertilizer production to supply American farms.⁵ We further appreciated President Biden's announcement to double that investment.⁶ These efforts should mitigate future price spikes and reduce the cost of transporting fertilizers.

We also encourage the federal government to do more to alleviate short-term fertilizer shortages. We urge the Department of Commerce to lift countervailing duties on Moroccan fertilizer.⁷ These duties, which were enacted in response to a complaint from a company that already controls most of the U.S. fertilizer market, has reduced domestic supply of fertilizers and exacerbated market concentration. While we support continued sanctions against the Russian economy and Russian firms, we believe restrictions on Moroccan imports place undue burdens on U.S. farmers.

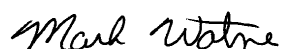
Finally, consideration should be given to incentivizing and assisting farmers in transitioning to production systems that are less reliant on synthetic and foreign-produced fertilizer and facilitating widespread adoption of precision agriculture technology by ensuring that such technology is more affordable and widely available.

Conclusion

Thank you for the opportunity to submit comments. NDFU stands ready to support USDA's work to alleviate high fertilizer and other input costs. Please do not hesitate to contact me if you would like to discuss these comments further.

Sincerely,

NORTH DAKOTA FARMERS UNION



Mark Watne
President

⁵ "USDA Announces Plans for \$250 Million Investment to Support Innovative American-made Fertilizer to give US Farmers more choices in the Marketplace," USDA, press release no. 0060.22, March 11, 2022. <https://www.usda.gov/media/press-releases/2022/03/11/usda-announces-plans-250-million-investment-support-innovative>

⁶ White House, "FACT SHEET: President Biden Announces New Actions to Address Putin's Price Hike, Make Food More Affordable, and Lower Costs for Farmers," press release, May 11, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/11/fact-sheet-president-biden-announces-new-actions-to-address-putins-price-hike-make-food-more-affordable-and-lower-costs-for-farmers/>.

⁷ Department of Commerce, "Final Determination in the Countervailing Duty Investigations of Phosphate Fertilizers from Morocco and Russia," <https://www.trade.gov/faq/final-determinations-countervailing-duty-investigations-phosphate-fertilizers-morocco-and>.

