

109TH CONGRESS
1ST SESSION

S. 1141

To authorize the Secretary of Homeland Security to regulate ammonium nitrate.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2005

Mr. COCHRAN (for himself, Mr. PRYOR, Mr. CHAMBLISS, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To authorize the Secretary of Homeland Security to regulate ammonium nitrate.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Handling of
5 Ammonium Nitrate Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) ammonium nitrate is an important fertilizer
9 used to produce a reliable and affordable food supply
10 for the United States and the world;

1 (2) in the wrong hands, ammonium nitrate may
2 be used for illegal activities;

3 (3) the production, importation, storage, sale,
4 and distribution of ammonium nitrate affects inter-
5 state and intrastate commerce; and

6 (4) it is necessary to regulate the production,
7 storage, sale, and distribution of ammonium nitrate.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **AMMONIUM NITRATE.**—The term “ammo-
11 nium nitrate” means solid ammonium nitrate that is
12 chiefly the ammonium salt of nitric acid and con-
13 tains not less than 33 percent nitrogen, of which—

14 (A) 50 percent is in ammonium form; and

15 (B) 50 percent is in nitrate form.

16 (2) **FACILITY.**—

17 (A) **IN GENERAL.**—The term “facility”
18 means any site where ammonium nitrate is pro-
19 duced, stored, or held for distribution, sale, or
20 use.

21 (B) **INCLUSIONS.**—The term “facility” in-
22 cludes—

23 (i) all buildings or structures used to
24 produce, store, or hold ammonium nitrate

1 for distribution, sale, or use at a single
2 site; and

3 (ii) multiple sites described in clause
4 (i), if the sites are—

5 (I) contiguous or adjacent; and

6 (II) owned or operated by the
7 same person.

8 (3) HANDLE.—The term “handle” means to
9 produce, store, sell, or distribute ammonium nitrate.

10 (4) HANDLER.—The term “handler” means
11 any person that produces, stores, sells, or distributes
12 ammonium nitrate.

13 (5) PURCHASER.—The term “purchaser”
14 means any person that purchases ammonium ni-
15 trate.

16 (6) SECRETARY.—The term “Secretary” means
17 the Secretary of Homeland Security.

18 **SEC. 4. REGULATION OF HANDLING AND PURCHASE OF AM-**
19 **MONIUM NITRATE.**

20 (a) IN GENERAL.—The Secretary may regulate the
21 handling and purchase of ammonium nitrate to prevent
22 the misappropriation or use of ammonium nitrate in viola-
23 tion of law.

24 (b) REGULATIONS.—The Secretary may promulgate
25 regulations that require—

1 (1) handlers—

2 (A) to register facilities;

3 (B) to sell or distribute ammonium nitrate
4 only to handlers and purchasers registered
5 under this Act; and

6 (C) to maintain records of sale or distribu-
7 tion that include the name, address, telephone
8 number, and registration number of the imme-
9 diate subsequent purchaser of ammonium ni-
10 trate; and

11 (2) purchasers to be registered.

12 (c) USE OF PREVIOUSLY SUBMITTED INFORMA-
13 TION.—Prior to requiring a facility or handler to submit
14 new information for registration under this section, the
15 Secretary shall—

16 (1) request from the Attorney General, and the
17 Attorney General shall provide, any information pre-
18 viously submitted to the Attorney General by the fa-
19 cility or handler under section 843 of title 18,
20 United States Code; and

21 (2) at the election of the facility or handler—

22 (A) use the license issued under that sec-
23 tion in lieu of requiring new information for
24 registration under this section; and

1 (B) consider the license to fully comply
2 with the requirement for registration under this
3 section.

4 (d) CONSULTATION.—In promulgating regulations
5 under this section, the Secretary shall consult with the
6 Secretary to Agriculture to ensure that the access of agri-
7 cultural producers to ammonium nitrate is not unduly bur-
8 dened.

9 (e) DATA CONFIDENTIALITY.—

10 (1) IN GENERAL.—Notwithstanding section 552
11 of title 5, United States Code, or the USA PA-
12 TRIOT ACT (Public Law 107–56; 115 Stat. 272)
13 or an amendment made by that Act, except as pro-
14 vided in paragraph (2), the Secretary may not dis-
15 close to any person any information obtained from
16 any facility, handler, or purchaser—

17 (A) regarding any action taken, or to be
18 taken, at the facility or by the handler or pur-
19 chaser to ensure the secure handling of ammo-
20 nium nitrate; or

21 (B) that would disclose—

22 (i) the identity or address of any pur-
23 chase of ammonium nitrate;

24 (ii) the quantity of ammonium nitrate
25 purchased; or

1 (iii) the details of the purchase trans-
2 action.

3 (2) EXCEPTIONS.—The Secretary may disclose
4 any information described in paragraph (1)—

5 (A) to an officer or employee of the United
6 States, or a person that has entered into a con-
7 tract with the United States, who needs to
8 know the information to perform the duties of
9 the officer, employee, or person, or to a State
10 agency pursuant to an arrangement under sec-
11 tion 6, under appropriate arrangements to en-
12 sure the protection of the information;

13 (B) to the public, to the extent the Sec-
14 retary specifically finds that disclosure of par-
15 ticular information is required in the public in-
16 terest; or

17 (C) to the extent required by order of a
18 Federal court in a proceeding in which the Sec-
19 retary is a party, under such protective meas-
20 ures as the court may prescribe.

21 **SEC. 5. ENFORCEMENT.**

22 (a) INSPECTIONS.—The Secretary, without a war-
23 rant, may enter any place during business hours that the
24 Secretary believes may handle ammonium nitrate to deter-
25 mine whether the handling is being conducted in accord-

1 ance with this Act, including regulations promulgated
2 under this Act.

3 (b) PREVENTION OF SALE OR DISTRIBUTION
4 ORDER.—In any case in which the Secretary has reason
5 to believe that ammonium nitrate has been handled other
6 than in accordance with this Act, including regulations
7 promulgated under this Act, the Secretary may issue a
8 written order preventing any person that owns, controls,
9 or has custody of the ammonium nitrate from selling or
10 distributing the ammonium nitrate.

11 (c) APPEAL PROCEDURES.—

12 (1) IN GENERAL.—A person subject to an order
13 under subsection (b) may request a hearing to con-
14 test the order, under such administrative adjudica-
15 tion procedures as the Secretary may establish.

16 (2) RESCISSION.—If an appeal under para-
17 graph (1) is successful, the Secretary shall rescind
18 the order.

19 (d) IN REM PROCEEDINGS.—The Secretary may in-
20 stitute in rem proceedings in the United States district
21 court for the district in which the ammonium nitrate is
22 located to seize and confiscate ammonium nitrate that has
23 been handled in violation of this Act, including regulations
24 promulgated under this Act.

1 **SEC. 6. ADMINISTRATIVE PROVISIONS.**

2 (a) COOPERATIVE AGREEMENTS.—The Secretary
3 may enter into a cooperative agreement with the Secretary
4 of Agriculture, or the head of any State department of
5 agriculture or other State agency that regulates plant nu-
6 trients, to carry out this Act, including cooperating in the
7 enforcement of this Act through the use of personnel or
8 facilities.

9 (b) DELEGATION.—

10 (1) IN GENERAL.—The Secretary may delegate
11 to a State the authority to assist the Secretary in
12 the administration and enforcement of this Act, in-
13 cluding regulations promulgated under this Act.

14 (2) DELEGATION REQUIRED.—On the request
15 of a Governor of a State, the Secretary shall dele-
16 gate to the State the authority to carry out section
17 4 or 5, on a determination by the Secretary that the
18 State is capable of satisfactorily carrying out that
19 section.

20 (3) FUNDING.—If the Secretary enters into an
21 agreement with a State under this subsection to del-
22 egate functions to the State, the Secretary shall pro-
23 vide to the State adequate funds to enable the State
24 to carry out the functions.

25 (4) INAPPLICABILITY.—Notwithstanding any
26 other provision of this subsection, this subsection

1 does not authorize a State to carry out a function
2 under section 4 or 5 relating to a facility or handler
3 in the State that makes the election described in sec-
4 tion 4(c)(2).

5 **SEC. 7. CIVIL LIABILITY.**

6 (a) UNLAWFUL ACTS.—It is unlawful for any per-
7 son—

8 (1) to fail to perform any duty required by this
9 Act, including regulations promulgated under this
10 Act;

11 (2) to violate the terms of registration under
12 this Act;

13 (3) to fail to keep any record, make any report,
14 or allow any inspection required by this Act; or

15 (4) to violate any sale or distribution order
16 issued under this Act.

17 (b) PENALTIES.—

18 (1) IN GENERAL.—A person that violates this
19 Act (including a regulation promulgated under this
20 Act) may only be assessed a civil penalty by the Sec-
21 retary of not more than \$50,000 per violation.

22 (2) NOTICE AND OPPORTUNITY FOR A HEAR-
23 ING.—No civil penalty shall be assessed under this
24 Act unless the person charged has been given notice
25 and opportunity for a hearing on the charge in the

1 county, parish, or incorporated city of residence of
2 the person charged.

3 (c) JURISDICTION OVER ACTIONS FOR CIVIL DAM-
4 AGES.—The district courts of the United States shall have
5 exclusive jurisdiction over any action for civil damages
6 against a handler for any harm or damage that is alleged
7 to have resulted from the use of ammonium nitrate in vio-
8 lation of law that occurred on or after the date of enact-
9 ment of this Act.

10 **SEC. 8. STATE LAW PREEMPTION.**

11 This Act preempts any State law (including a regula-
12 tion) that regulates the handling of ammonium nitrate to
13 prevent the misappropriation or use of ammonium nitrate
14 in violation of law.

15 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as are necessary to carry out this Act.

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