109TH CONGRESS  
1ST SESSION

H. R. 3197

To authorize the Secretary of Homeland Security to regulate the production, storage, sale, and distribution of ammonium nitrate on account of the prior use of ammonium nitrate to create explosives used in acts of terrorism and to prevent terrorists from acquiring ammonium nitrate to create explosives.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. Weldon of Pennsylvania (for himself, Mr. Thompson of Mississippi, Mr. Etheridge, Mr. Brown of Ohio, Mrs. Christensen, and Mr. King of New York) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To authorize the Secretary of Homeland Security to regulate the production, storage, sale, and distribution of ammonium nitrate on account of the prior use of ammonium nitrate to create explosives used in acts of terrorism and to prevent terrorists from acquiring ammonium nitrate to create explosives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

1

2

3

4

5
SEC. 2. FINDINGS.

Congress finds the following:

(1) Although ammonium nitrate is an important fertilizer used in agricultural production, in the wrong hands, ammonium nitrate can be used to create explosives and was so used in terrorist attacks conducted in Oklahoma City, Bali, and Istanbul.

(2) The production, importation, storage, sale, and distribution of ammonium nitrate affects interstate and intrastate commerce.

(3) It is necessary for the Secretary of Homeland Security to regulate the production, storage, sale, and distribution of ammonium nitrate on account of the prior use of ammonium nitrate to create explosives used in acts of terrorism and to prevent terrorists from acquiring ammonium nitrate to create explosives.

SEC. 3. DEFINITIONS.

In this Act:

(1) ACT.—The term “this Act” includes regulations issued under this Act.

(2) AMMONIUM NITRATE.—The term “ammonium nitrate” means solid ammonium nitrate that is chiefly the ammonium salt of nitric acid and contains not less than 33 percent nitrogen, of which—

(A) 50 percent is in ammonium form; and
(B) 50 percent is in nitrate form.

(3) FACILITY.—The term “facility” means any site where ammonium nitrate is produced, stored, or held for distribution, sale, or use. The term includes—

(A) all buildings or structures used to produce, store, or hold ammonium nitrate for distribution, sale, or use at a single site; and

(B) multiple sites described in subparagraph (A), if the sites are—

(i) contiguous or adjacent; and

(ii) owned or operated by the same person.

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

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

(6) PURCHASER.—The term “purchaser” means any person that purchases ammonium nitrate.

(7) TERRORISM.—The term “terrorism” has the meaning given that term in section 2(15) of the Homeland Security Act of 2002 (6 U.S.C. 101(15)).
(8) Secretary.—The term “Secretary” means the Secretary of Homeland Security.

SEC. 4. REGULATION OF HANDLING AND PURCHASE OF AMMONIUM NITRATE.

(a) In General.—The Secretary may regulate the handling and purchase of ammonium nitrate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

(b) Regulations.—The Secretary may promulgate regulations that require—

(1) handlers—

(A) to register facilities;

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

(C) to maintain records of sale or distribution that include the name, address, telephone number, and registration number of the immediate subsequent purchaser of ammonium nitrate; and

(2) purchasers to be registered.

(c) Use of Previously Submitted Information.—Prior to requiring a facility or handler to submit new information for registration under this section, the Secretary shall—
(1) request from the Attorney General, and the Attorney General shall provide, any information previously submitted to the Attorney General by the facility or handler under section 843 of title 18, United States Code; and

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

(A) use the license issued under that section in lieu of requiring new information for registration under this section; and

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

(d) CONSULTATION.—In promulgating regulations under this section, the Secretary shall consult with the Secretary of Agriculture to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

(e) DATA CONFIDENTIALITY.—Notwithstanding section 552 of title 5, United States Code, or the USA PATRIOT ACT (Public Law 107–56; 115 Stat. 272) or an amendment made by that Act, the Secretary may not disclose to any person any information obtained from any facility, handler, or purchaser—
(1) regarding any action taken, or to be taken, at the facility or by the handler or purchaser to ensure the secure handling of ammonium nitrate; or

(2) that would disclose—

(A) the identity or address of any purchase of ammonium nitrate;

(B) the quantity of ammonium nitrate purchased; or

(C) the details of the purchase transaction.

(f) EXCEPTIONS TO DATA CONFIDENTIALITY.—The Secretary may disclose any information described in subsection (e)—

(1) to an officer or employee of the United States, or a person that has entered into a contract with the United States, who needs to know the information to perform the duties of the officer, employee, or person, or to a State agency pursuant to an arrangement under section 6, under appropriate arrangements to ensure the protection of the information;

(2) to the public, to the extent the Secretary specifically finds that disclosure of particular information is required in the public interest; or

(3) to the extent required by order of a Federal court in a proceeding in which the Secretary is a
party, under such protective measures as the court may prescribe.

SEC. 5. ENFORCEMENT.

(a) INSPECTIONS.—The Secretary, without a warrant, may enter any place during business hours that the Secretary believes may handle ammonium nitrate to determine whether the handling is being conducted in accordance with this Act.

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

(c) APPEAL PROCEDURES.—

(1) IN GENERAL.—A person subject to an order under subsection (b) may request a hearing to contest the order, under such administrative adjudication procedures as the Secretary may establish.

(2) RESCISSION.—If an appeal under paragraph (1) is successful, the Secretary shall rescind the order.

(d) IN REM PROCEEDINGS.—The Secretary may institute in rem proceedings in the United States district
court for the district in which the ammonium nitrate is located to seize and confiscate ammonium nitrate that has been handled in violation of this Act.

SEC. 6. ADMINISTRATIVE PROVISIONS.

(a) COOPERATIVE AGREEMENTS.—The Secretary may enter into a cooperative agreement with the Secretary of Agriculture, or the head of any State department of agriculture or other State agency that regulates plant nutrients, to carry out this Act, including cooperating in the enforcement of this Act through the use of personnel or facilities.

(b) DELEGATION.—

(1) IN GENERAL.—The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this Act.

(2) DELEGATION REQUIRED.—On the request of a Governor of a State, the Secretary shall delegate to the State the authority to carry out section 4 or 5, on a determination by the Secretary that the State is capable of satisfactorily carrying out that section.

(3) FUNDING.—If the Secretary enters into an agreement with a State under this subsection to delegate functions to the State, the Secretary shall pro-
vide to the State adequate funds to enable the State
to carry out the functions.

(4) Inapplicability.—Notwithstanding any
other provision of this subsection, this subsection
does not authorize a State to carry out a function
under section 4 or 5 relating to a facility or handler
in the State that makes the election described in sec-
tion 4(c)(2).

SEC. 7. CIVIL LIABILITY.

(a) Unlawful acts.—It is unlawful for any per-
son—

(1) to fail to perform any duty required by this
Act;

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

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

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

(b) Penalties.—

(1) In general.—A person that violates this
Act may only be assessed a civil penalty by the Sec-

(2) Notice and opportunity for a hearing.—No civil penalty shall be assessed under this
Act unless the person charged has been given notice and opportunity for a hearing on the charge in the county, parish, or incorporated city of residence of the person charged.

(c) JURISDICTION OVER ACTIONS FOR CIVIL DAMAGES.—The district courts of the United States shall have exclusive jurisdiction over any action for civil damages against a handler for any harm or damage that is alleged to have resulted from the use of ammonium nitrate in violation of law that occurred on or after the date of enactment of this Act.

SEC. 8. STATE LAW PREEMPTION.

This Act preempts any State law that regulates the handling of ammonium nitrate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.