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.

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”.

SEC. 2. FINDINGS.
Congress finds that—

(1) ammonium nitrate is an important fertilizer used to produce a reliable and affordable food supply for the United States and the world;
(2) in the wrong hands, ammonium nitrate may be used for illegal activities;

(3) the production, importation, storage, sale, and distribution of ammonium nitrate affects interstate and intrastate commerce; and

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

SEC. 3. DEFINITIONS.

In this Act:

(1) 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.

(2) FACILITY.—

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

(B) INCLUSIONS.—The term “facility” includes—

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

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

(I) contiguous or adjacent; and

(II) owned or operated by the
same person.

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

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

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

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

SEC. 4. REGULATION OF HANDLING AND PURCHASE OF AM-
MONIUM 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 viola-
tion of law.

(b) REGULATIONS.—The Secretary may promulgate
regulations that require—
1 (1) handlers—

2 (A) to register facilities;

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

4 (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

5 (2) purchasers to be registered.

6 (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—

7 (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

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

9 (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 to Agriculture to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

(e) DATA CONFIDENTIALITY.—

(1) IN GENERAL.—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, except as provided in paragraph (2), the Secretary may not disclose to any person any information obtained from any facility, handler, or purchaser—

(A) 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

(B) that would disclose—

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

(ii) the quantity of ammonium nitrate purchased; or
(iii) the details of the purchase transaction.

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

(A) 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;

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

(C) 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 accord-
ance with this Act, including regulations promulgated under 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, including regulations promulgated under 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 confisicate ammonium nitrate that has been handled in violation of this Act, including regulations promulgated under 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, including regulations promulgated under 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 provide 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, including regulations promulgated under 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 (including a regulation promulgated under this
Act) may only be assessed a civil penalty by the Sec-
retary of not more than $50,000 per violation.

(2) NOTICE AND OPPORTUNITY FOR A HEAR-
ing.—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 vio-
lation of law that occurred on or after the date of enact-
ment of this Act.

SEC. 8. STATE LAW PREEMPTION.

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

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

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