

Legislative Analysis



REGULATE THE SALE OF AMMONIUM NITRATE

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House Bill 4635 (Substitute H-1)

Sponsor: Rep. Goeff Hansen

Committee: Agriculture

First Analysis (5-11-05)

BRIEF SUMMARY: The bill would require the Department of Agriculture to promulgate rules concerning the distribution, sale, and storage of ammonium nitrate fertilizer.

FISCAL IMPACT: The bill would have no apparent fiscal impact on the state or local governmental units.

THE APPARENT PROBLEM:

Ammonium nitrate is a common agricultural fertilizer that provides a concentrated source of nitrogen. While it is not widely used in Michigan – accounting for less than one percent of all fertilizer consumed in the state – it is used extensively on fruit trees, vegetable crops, and no till fields. Unfortunately, it is also a key component in many explosives, including the bomb that killed 168 people in the April 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. In a 1998 report entitled, "Containing the Threat from Illegal Bombings: An Integrated National Strategy for Marking, Tapping, Rendering Inert, and Licensing Explosives and their Precursors," the National Academy of Sciences noted that while there are many common chemicals from which a bomb can be fashioned, ammonium nitrate "is by far the most commonly accessible explosive material" and as such poses the greatest security threat.

As the country commemorates the 10th anniversary of the horrific Oklahoma City bombing, ammonium nitrate continues to be widely available and largely unregulated in most parts of the country, despite its potential use as an explosive material. To date, only four states have taken action to increase the security of ammonium nitrate sales and storage, and some people believe that Michigan's laws and regulations on ammonium nitrate fertilizers do not adequately protect against its use in making explosives. In an era of increased security threats, state regulations in this regard need to be strengthened.

THE CONTENT OF THE BILL:

The bill would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act to require the Department of Agriculture to promulgate rules concerning the distribution, sale, and storage of ammonium nitrate fertilizer.

Rules regarding the storage of such fertilizers would have to address issues related to vandalism, theft, and unauthorized access. Rules regarding the sale of such fertilizers would have to address a system to track sale and distribution, including maintaining

records noting the date of the sale; the quantity purchased; the purchaser's name, address, and telephone number; as well as a requirement that certain kinds of identification be produced for allowable sales and a requirement that sale records be retained for at least two years. Additionally, the rules would also have to address standards for determining whether sales are made out of season, under unusual patterns or circumstances, and in unusual amounts. The sales records maintained pursuant to the act and the related rules would be exempt from disclosure under the Freedom of Information Act.

In addition, the bill specifies that the department could not suspend or revoke the license of a fertilizer distributor or manufacturer who refuses to sell fertilizer containing ammonium nitrate to a person who fails to comply with the department's rules regarding such fertilizer.

MCL 324.8515 and 324.8516

BACKGROUND INFORMATION:

According to various news accounts and committee testimony, only four states – South Carolina, Nevada, Maryland, and Oklahoma – have enacted regulations regarding the security of ammonium nitrate.

South Carolina

During the 2001-2002 legislative session, the governor and legislature of South Carolina enacted Act No. 340 (House Bill 4944) to regulate access to certain "restricted" fertilizers – namely, ammonium nitrate, urea, and anhydrous ammonia – that are determined by the State Crop Pest Commission (Clemson University) to have a potential explosive capacity that poses an unreasonable threat to public safety. Under the South Carolina Fertilizer Law of 1954 (Section 46-25-10 et seq.), companies selling or distributing commercial fertilizer must be registered with the state and possess either a general fertilizer permit or restricted fertilizer permit. A restricted fertilizer permit enables a company to distribute all commercial fertilizers, including those designated as "restricted" fertilizers. The act requires a restricted fertilizer permit-holder to record the driver's license number of the individual purchasing a restricted fertilizer and other information as required by the commission. All records have to be maintained for at least two years. In addition, a restricted fertilizer permit holder may refuse to sell a restricted fertilizer to persons if the sale is out of season, in unusual circumstances, or under suspicious purchasing patterns.

Nevada

In 2003, the Nevada legislature and governor enacted Chapter 48 of the 2003 Statutes of Nevada (Assembly Bill 193), which would, among other things, require the director of the state Department of Agriculture to adopt rules concerning the application and distribution of any commercial fertilizer or agricultural mineral that is necessary for agricultural purposes, but is injurious to individuals, pollinating insects, bees, animals, crops or land, or is detrimental to vegetation (except weeds), wildlife or the public health

and safety, unless it is carefully used. (Such a fertilizer would be a "restricted use" commercial fertilizer and, at present, includes ammonium nitrate and anhydrous ammonia, a common ingredient used to "cook" methamphetamine.) The act also requires registration with the department to engage in the sale or distribution of a restricted-use commercial fertilizer. In addition, the act requires certain records be maintained for the sales of restricted-use fertilizers, including (1) the date of the sale or delivery; (2) the name and address of the seller or recipient; (3) the brand name of the fertilizer sold or distributed; (4) the amount sold or distributed; and (5) other information as required by the department director. Departmental regulations require sellers to record a unique identification number taken from a government issued document that contains the purchaser's photograph (such as a driver's license or state issued identification card). Records are to be maintained for at least two years and made available to the department director upon request.

Oklahoma

In February, the Oklahoma legislature passed House Concurrent Resolution 1001, foregoing the legislature's review of rules concerning ammonium nitrate security promulgated by the Oklahoma Department of Agriculture, Food, and Forestry. The proposed rules, contained in Oklahoma Administrative Code 35:30-29-37.1, would require that ammonium nitrate be stored in a secure manner that provides reasonable protection against vandalism, theft, or unauthorized access. The rules would also require that fertilizer retailers obtain the following information for all sales of ammonium nitrate: (1) the date of sale; (2) the quantity purchased; (3) the driver's license or state identification number of the purchaser; and (4) the purchaser's name, address, and telephone number. The records would have to be maintained for at least two years. In addition, a fertilizer retailer would be permitted to refuse to sell ammonium nitrate to any individual attempting to purchase it out of season, in unusual quantities, or under suspicious purchasing patterns.

Maryland

In April, Maryland Governor Robert Ehrlich signed Chapter 207 of the 2005 Session Laws of Maryland (House Bill 402), which would require fertilizer distributors to maintain, for at least two years, records of all sales or distributions of fertilizer containing ammonium nitrate, including the following: (1) the date; (2) the name, address, and driver's license or state identification number of the purchaser or recipient; (3) the quantity sold or distributed; and (4) other information as required by the Secretary of Agriculture. In addition, records are to be made available, upon request, to the Secretary of Agriculture. The Secretary of Agriculture must maintain requested records in a manner that protects the identity of distributors and purchasers of ammonium nitrate fertilizer, although such information can be disclosed for public safety purposes. Finally, the state Secretary of Agriculture shall also establish other regulations in consultation with the state Office of Homeland Security.

ARGUMENTS:

For:

Despite its benefits as an agricultural fertilizer, ammonium nitrate clearly poses an unreasonable security threat if it is obtained for an illicit purpose. In an age of increased domestic terrorism, it has become necessary to enact regulations that protect against illicit uses of ammonium nitrate.

The bill, then, requires the Department of Agriculture to promulgate rules regarding the secure sale, distribution, and storage of ammonium nitrate fertilizer. In particular, the rules would have to establish a system of tracking sales of ammonium nitrate and standards for noting suspicious purchase patterns. These standards, including the requirement that records be maintained for at least two years, are similar to the regulations established in other states and, according to committee testimony, are similar to current industry practices.

It should also be noted that, many of these requirements were recommended by the National Academy of Sciences in its 1998 report. Among other recommendations, the NAS study recommended that purchasers of ammonium nitrate fertilizers provide identification at the time of the sale and recommended that sellers maintain records of the sale. Further, the report recommended that at increased threat levels sellers should also be required to report suspicious behavior of a sale.

For:

There is some concern within the industry that the failure to take action now regarding the security of ammonium nitrate could eventually threaten the availability of ammonium nitrate as a fertilizer. This bill establishes a regulatory scheme that better protects against the illicit use of ammonium nitrate and, at the same time, ensures the availability of ammonium nitrate to consumers.

POSITIONS:

The Department of Agriculture supports the bill. (5-10-05)

The Michigan Agri-Business Association supports the bill. (5-10-05)

The Michigan Farm Bureau supports the bill. (5-10-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.