

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Fertilizers.

Sponsored by: Joint Agriculture, State and Public Lands
and Water Resources Interim Committee

A BILL

for

1 AN ACT relating to fertilizer; modifying existing
2 definitions and providing new definitions; amending label
3 requirements; providing for registration of persons in
4 possession of ammonium nitrate or regulated ammonium
5 nitrate materials; identifying adulterated fertilizers; and
6 providing for a contingent effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** This act shall be effective only if the
11 United States congress publishes federal rules under H.R.
12 2764, Subtitle J, Secure Handling of Ammonium Nitrate or
13 its successor. The legislative service office is

1 authorized and directed to publish the provision of this
2 act in the manner which most effectively displays the
3 contingencies provided in this act.

4
5 **Section 2.** W.S. 11-14-118 is created to read:

6
7 **11-14-118. Registration of ammonium nitrate.**

8
9 [Alternative 1]

10
11 (a) Upon final publication in the federal register of
12 federal rules under H.R. 2764, Subtitle J, Secure Handling
13 of Ammonium Nitrate or its successor by the United States
14 Congress, the department shall promulgate rules and
15 regulations to provide for the establishment of the
16 following:

17
18 (i) Regulation of ammonium nitrate and nitrate
19 materials;

20
21 (ii) Registration of any person who possesses
22 ammonium nitrate or regulated ammonium nitrate materials;

23

1 (iii) A registration fee;

2 **[Staff Note: Are there any parameters on the registration**

3 **fee?**

4

5 (iv) Record keeping requirements;

6

7 (v) Storage facility and security requirements;

8

9 (vi) Inspection procedures;

10

11 (vii) Penalties;

12 **[Staff Note: Are there any parameters on the penalties?**

13

14 (viii) Other requirements as determined by the
15 director to be necessary to comply with the publication of
16 federal rules under H.R. 2764 or its successor.

17 **[Staff Note: What are the parameters on registration fees**
18 **and penalties? As written, it could be considered an**
19 **unlawful delegation issue.]**

20

21 **[Alternative 2]**

22

1 (a) Any person who possesses ammonium nitrate or
2 regulated ammonium nitrate materials shall be registered
3 with the department. The registration application shall be
4 on a form approved by the director in consultation with and
5 upon the recommendation of the director of the office of
6 homeland security. The director shall charge an annual
7 registration fee not to exceed fifty dollars (\$50.00).

8 [Staff Note: When do they have to be registered by?]
9 Nothing in this section shall require the registration of
10 any person who produces, sells or purchases ammonium
11 nitrate exclusively for use in the production of an
12 explosive under a license or permit issued under chapter 40
13 of title 18, U.S.C.

14
15 (b) Ammonium nitrate and regulated ammonium nitrate
16 materials shall be secured to provide reasonable protection
17 against vandalism, theft or other unauthorized use.
18 Reasonable protection may include, but not be limited to,
19 ensuring that storage facilities are fenced and locked when
20 unattended and inspected daily for signs of attempted entry
21 or vandalism to any storage facility. The director in
22 consultation with or upon the recommendation of the
23 director of the office of homeland security, may recommend

1 other security measures. The director shall work in
2 consultation with or upon the recommendation of the
3 director of the office of homeland security to provide
4 information to ammonium nitrate users on appropriate
5 security measures.

6
7 (c) A distributor shall record the date of sale and
8 quantity sold, the valid state or federal driver license
9 number, the current physical address and telephone number
10 for the purchaser of ammonium nitrate or regulated ammonium
11 nitrate materials. If the purchaser will apply the
12 ammonium nitrate or regulated ammonium nitrate material,
13 the distributor shall obtain the registrant's registration
14 number as a condition of completing the sale. A
15 registrant, if not a distributor, shall record the date of
16 application. All sale and application records shall be
17 retained by each registrant for a period of not less than
18 two (2) years.

19
20 (d) Registrants shall comply with all federal and
21 state requirements regarding the dissemination of any
22 information, providing the director and the director of the
23 office of homeland security access to the records.

1 [Staff Note: What information? Is this a reference to HR
 2 2764 pg 241-247 information? Is this open ended? If so,
 3 it may be a delegation of powers issue.]

4
 5 (e) For the purposes of this section:

6
 7 (i) "Ammonium nitrate" means chiefly the
 8 ammonium salt of nitric acid. Ammonium nitrate shall not
 9 contain less than thirty-three percent (33%) nitrogen, one-
 10 half (1/2) of which is the ammonium form and one-half (1/2)
 11 of which is the nitrate form;

12 [Staff Note: If it contains less, is it not ammonium
 13 nitrate? Or is it you can't sell something as ammonium
 14 nitrate unless it meets these specifications?]

15
 16 (ii) "Regulated ammonium nitrate materials"
 17 means regulated ammonium nitrate material fertilizer
 18 products which have been determined by the director in
 19 consultation with and upon the recommendation of the
 20 director of the office of homeland security to warrant
 21 regulation based on the potential explosive capacity of the
 22 fertilizer material determined by the ammonium nitrate
 23 content.

1

2 **Section 3.** W.S. 11-14-101, 11-14-103(a)(xvii), by
 3 creating new paragraphs (xxiii) and (xxiv) and by
 4 renumbering paragraph (xxiii) as (xxv), 11-14-105(a),
 5 11-14-109(a)(i), (b)(iii) and by creating a new paragraph
 6 (iv) and 11-14-115(a) are amended to read:

7

8 **11-14-101. Short title.**

9

10 This act shall be known as the "Wyoming Fertilizer Law of
 11 ~~1971~~2009."

12

13 **11-14-103. Definitions.**

14

15 (a) As used in this act:

16

17 **[Staff Note: Do you need any changes to bulk fertilizer or**
 18 **commercial fertilizer?]**

19

20 (xvii) "Primary nutrient" means the plant
 21 nutrients nitrogen (N), available phosphate (P2O5) or
 22 ~~phosphorus, and~~ soluble potash ~~or potassium~~ (K2O);

23

1 (xxiii) "Organic fertilizer" means a material
2 containing carbon and one (1) or more elements other than
3 hydrogen and oxygen essential for plant growth, and allowed
4 for use under the Organic Foods Production Act of 1990, as
5 promulgated by the United States department of agriculture
6 "National List of Allowed and Prohibited Substances" rule;

7
8 (xxiv) "Secondary or micro plant nutrients"
9 means nutrients other than the primary nutrients that are
10 essential for the normal growth of plants and that may need
11 to be added to the growth medium. Secondary plant
12 nutrients shall include calcium, magnesium and sulfur.
13 Micro plant nutrients shall include boron, chlorine,
14 cobalt, copper, iron, manganese, molybdenum, nickel, sodium
15 and zinc;

16
17 ~~(xxiii)~~(xxv) "This act" means W.S. 11-14-101
18 through 11-14-117.

19
20 **11-14-105. Label requirements.**

21
22 (a) Any commercial fertilizer, soil amendment or soil
23 conditioner distributed in this state in containers shall

1 have affixed to the container a label setting forth in
2 clearly legible and conspicuous form the information
3 required by W.S. 11-14-104(a) and (b), the month and year
4 of preparation or lot number, and shall show the net weight
5 stated in both metric units and avoirdupois. In case of
6 bulk shipments, this information in written or printed form
7 shall accompany delivery and be supplied to the purchaser
8 at time of delivery.

9

10 **11-14-109. Misbranded or adulterated fertilizer, soil**
11 **conditioner or soil amendment; distribution of unregistered**
12 **fertilizer.**

13

14 (a) No person shall distribute misbranded fertilizer,
15 soil conditioners or soil amendments. A commercial
16 fertilizer, soil conditioner or soil amendment is
17 misbranded if:

18

19 (i) Its labeling is false or misleading in any
20 particular way, including being labeled organic fertilizer,
21 when its use is not allowed pursuant to the United States
22 department of agriculture "National List of Allowed and
23 Prohibited Substances" rule;

1

2 (b) No person shall distribute an adulterated
3 fertilizer, soil conditioner or soil amendment. A
4 commercial fertilizer, soil conditioner or soil amendment
5 is adulterated if:

6

7 (iii) It contains unwanted crop seed or weed
8 seed;.

9

10 (iv) A commercial fertilizer that contains
11 guaranteed amounts of phosphates or micronutrients,
12 contains metals in amounts greater than the levels of
13 metals established by the following table:

14

<u>Metal</u>	<u>ppm per 1% P₂O₅</u>	<u>ppm per 1% micronutrients</u>
<u>Arsenic</u>	<u>13</u>	<u>112</u>
<u>Cadmium</u>	<u>10</u>	<u>83</u>
<u>Cobalt</u>	<u>3,100</u>	<u>23,000*</u>
<u>Lead</u>	<u>61</u>	<u>463</u>
<u>Mercury</u>	<u>1</u>	<u>6</u>
<u>Molybdenum</u>	<u>42</u>	<u>300*</u>
<u>Nickel</u>	<u>250</u>	<u>1,900</u>

<u>Selenium</u>	<u>26</u>	<u>180</u>
<u>Zinc</u>	<u>420</u>	<u>2,900*</u> <u>(* only applies</u> <u>when not</u> <u>guaranteed)</u>

1

2 [Staff Note: How does this amount for zinc mesh with the
3 line discussing guaranteed amounts?]

4

5 The table shall be used according to the following three
6 (3) situations:

7

8 (A) For fertilizers with a phosphate
9 guarantee, but no micronutrient guarantee, multiply the
10 percent guaranteed P₂O₅ in the product by the values in the
11 table to obtain the maximum allowable concentration of each
12 metal. The minimum value for P₂O₅ utilized as a multiplier
13 shall be six (6.0);

14

15 (B) For fertilizers with one (1) or more
16 micronutrient guarantee, but no phosphate guarantee,
17 multiply the sum of the guaranteed percentages of all
18 micronutrients in the product by the value in the
19 appropriate column in the table to obtain the maximum

1 allowable concentration (in parts per million, or ppm) of
2 each metal. The minimum value for micronutrients utilized
3 as a multiplier shall be one (1);

4
5 (C) For fertilizers with both a phosphate
6 and a micronutrient guarantee, multiply the guaranteed
7 percent P₂O₅ by the value in the appropriate column. The
8 minimum value for P₂O₅ utilized as a multiplier shall be one
9 (1). Then, multiply the sum of the guaranteed percentages
10 of the micronutrients by the value in the appropriate
11 column. The minimum value for micronutrients utilized as a
12 multiplier shall be one (1). Then, utilize the higher of
13 the two (2) resulting values as the maximum allowable
14 concentration (ppm) of each metal.

15
16 (e) Any penalties resulting from violations of these
17 heavy metal standards shall accrue to the registrant of the
18 material that violates the heavy metal standard.

19
20 **11-14-115. Action for damages to crops; evidence.**

21
22 (a) Nothing in this act shall preclude the right of a
23 purchaser to bring an action for any damages to crops, land

1 or livestock by reason of misbranded, adulterated or
2 deficient fertilizer, soil conditioner or soil amendment.

3

4 **Section 4.** Subject to section 1 of this act, this act
5 is effective July 1, 2009.

6

7

(END)