

110TH CONGRESS
1ST SESSION

H. R. 1680

IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2007

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Secure Handling of
3 Ammonium Nitrate Act of 2007”.

4 **SEC. 2. SECURE HANDLING OF AMMONIUM NITRATE.**

5 (a) IN GENERAL.—Title VIII of the Homeland Secu-
6 rity Act of 2002 (6 U.S.C. 361 et seq.) is amended by
7 adding at the end the following new subtitle:

8 **“Subtitle J—Secure Handling of**
9 **Ammonium Nitrate**

10 **“SEC. 899A. DEFINITIONS.**

11 “In this subtitle, the following definitions apply:

12 “(1) The term ‘ammonium nitrate’ means—

13 “(A) solid ammonium nitrate that is chief-
14 ly the ammonium salt of nitric acid and con-
15 tains not less than 33 percent nitrogen by
16 weight; and

17 “(B) any mixture containing a percentage
18 of ammonium nitrate that is equal to or greater
19 than the percentage determined by the Sec-
20 retary under section 899B(b).

21 “(2) The term ‘ammonium nitrate facility’
22 means any entity that produces, sells, or otherwise
23 transfers ownership of, or provides application serv-
24 ices for, ammonium nitrate.

25 “(3) The term ‘ammonium nitrate purchaser’
26 means any person who buys and takes possession of

1 ammonium nitrate from an ammonium nitrate facil-
2 ity.

3 **“SEC. 899B. REGULATION OF THE SALE AND TRANSFER OF**
4 **AMMONIUM NITRATE.**

5 “(a) IN GENERAL.—The Secretary shall regulate the
6 sale and transfer of ammonium nitrate by an ammonium
7 nitrate facility in accordance with this subtitle to prevent
8 the misappropriation or use of ammonium nitrate in an
9 act of terrorism.

10 “(b) AMMONIUM NITRATE MIXTURES.—The Sec-
11 retary, in consultation with the heads of appropriate Fed-
12 eral departments and agencies, including the Secretary of
13 Agriculture, shall, through notice and comment and by no
14 later than 90 days after the date of the enactment of this
15 subtitle, establish a threshold percentage for ammonium
16 nitrate in a substance. If a substance contains a percent-
17 age of ammonium nitrate that is equal to or greater than
18 the percentage established by the Secretary, the substance
19 shall be treated as ammonium nitrate for the purposes of
20 this subtitle.

21 “(c) REGISTRATION OF OWNERS OF AMMONIUM NI-
22 TRATE FACILITIES.—

23 “(1) REGISTRATION.—The Secretary shall es-
24 tablish a process by which—

1 “(A) any person who is the owner of an
2 ammonium nitrate facility is required to reg-
3 ister with the Department; and

4 “(B) upon such registration, such person
5 is issued a registration number for purposes of
6 this subtitle.

7 “(2) REGISTRATION INFORMATION.—The Sec-
8 retary shall require that each applicant for registra-
9 tion as the owner of an ammonium nitrate facility
10 must submit to the Secretary—

11 “(A) the name, address, and telephone
12 number of each ammonium nitrate facility
13 owned by the applicant;

14 “(B) the name of the person designated by
15 the owner of the ammonium nitrate facility as
16 the point of contact of such facility, for pur-
17 poses of this subtitle;

18 “(C) for each such facility, the amount of
19 ammonium nitrate that is sold or transferred
20 during each year; and

21 “(D) such other information as the Sec-
22 retary may determine is appropriate.

23 “(d) REGISTRATION OF AMMONIUM NITRATE PUR-
24 CHASERS.—

1 “(1) REGISTRATION.—The Secretary shall es-
2 tablish a process by which—

3 “(A) any person who seeks to be an ammo-
4 nium nitrate purchaser is required to register
5 with the Department; and

6 “(B) upon such registration, such person
7 is issued a registration number for purposes of
8 this subtitle.

9 “(2) REGISTRATION INFORMATION.—The Sec-
10 retary shall require that each applicant for registra-
11 tion under this subsection as a prospective ammo-
12 nium nitrate purchaser must submit to the Sec-
13 retary the name, address, and telephone number of
14 the applicant and the intended use of ammonium ni-
15 trate to be purchased by the applicant.

16 “(e) RECORDS.—

17 “(1) MAINTENANCE OF RECORDS.—The Sec-
18 retary shall require the owner of an ammonium ni-
19 trate facility engaged in selling or transferring am-
20 monium nitrate to—

21 “(A) maintain a record of each sale or
22 transfer of ammonium nitrate, during the two-
23 year period beginning on the date of such sale
24 or transfer; and

1 “(B) include in such record the informa-
2 tion described in paragraph (2).

3 “(2) SPECIFIC INFORMATION REQUIRED.—For
4 each such sale or transfer, the Secretary shall re-
5 quire the owner of an ammonium nitrate facility
6 to—

7 “(A) record the name, address, telephone
8 number, and registration number issued under
9 subsection (c) or (d) of each person that takes
10 possession of ammonium nitrate from the owner
11 of an ammonium nitrate facility, in a manner
12 prescribed by the Secretary;

13 “(B) if applicable, record the name, ad-
14 dress, and telephone number of each individual
15 who takes possession of the ammonium nitrate
16 on behalf of the person referred to in subpara-
17 graph (A), at the point of sale;

18 “(C) record the date and quantity of am-
19 monium nitrate sold or transferred; and

20 “(D) verify the identity of the persons re-
21 ferred to in subparagraphs (A) and (B), as ap-
22 plicable, in accordance with a procedure estab-
23 lished by the Secretary.

24 “(3) PROTECTION OF INFORMATION.—In main-
25 taining records in accordance with paragraph (1),

1 the owner of an ammonium nitrate facility shall take
2 reasonable actions to ensure the protection of the in-
3 formation included in such records.

4 “(f) EXEMPTION FOR EXPLOSIVE PURPOSES.—The
5 Secretary may exempt from this subtitle a person pro-
6 ducing, selling, or purchasing ammonium nitrate exclu-
7 sively for use as an explosive material under a license
8 issued under chapter 40 of title 18, United States Code.

9 “(g) CONSULTATION.—In carrying out this section,
10 the Secretary shall consult with the Secretary of Agri-
11 culture, States, and appropriate private sector entities, to
12 ensure that the access of agricultural producers to ammo-
13 nium nitrate is not unduly burdened.

14 “(h) DATA CONFIDENTIALITY.—

15 “(1) IN GENERAL.—Notwithstanding section
16 552 of title 5, United States Code, or the USA PA-
17 TRIOT ACT (Public Law 107–56; 115 Stat. 272),
18 and except as provided in paragraph (2), the Sec-
19 retary may not disclose to any person any informa-
20 tion obtained under this subtitle.

21 “(2) EXCEPTION.—The Secretary may disclose
22 any information obtained by the Secretary under
23 this subtitle to an officer or employee of the United
24 States, or a person that has entered into a contract
25 with the United States, who has a need to know the

1 information to perform the duties of the officer, em-
2 ployee, or person, or to a State agency pursuant to
3 section 899D, under appropriate arrangements to
4 ensure the protection of the information.

5 “(i) REGISTRATION PROCEDURES AND CHECK OF
6 TERRORIST WATCH LIST.—

7 “(1) REGISTRATION PROCEDURES.—

8 “(A) GENERALLY.—The Secretary shall
9 establish procedures to efficiently receive appli-
10 cations for registration numbers under this sub-
11 title, conduct the checks required under para-
12 graph (2), and promptly issue or deny a reg-
13 istration number.

14 “(B) INITIAL SIX-MONTH REGISTRATION
15 PERIOD.—The Secretary shall take steps to
16 maximize the number of registration applica-
17 tions that are submitted and processed during
18 the six-month period provided for in section
19 899F(e).

20 “(2) CHECK OF TERRORIST WATCH LIST.—

21 “(A) CHECK REQUIRED.—The Secretary
22 shall conduct a check of appropriate identifying
23 information of any person seeking to register
24 with the Department under subsection (c) or

1 (d) against identifying information that appears
2 on the terrorist watch list.

3 “(B) AUTHORITY TO DENY REGISTRATION
4 NUMBER.—If the person’s identifying informa-
5 tion appears on the terrorist watch list and the
6 Secretary determines such person may pose a
7 threat to national security, the Secretary may
8 deny issuance of a registration number under
9 this subtitle.

10 “(3) EXPEDITED REVIEW OF APPLICATIONS.—

11 “(A) IN GENERAL.—Following the six-
12 month period provided for in section 899F(e),
13 the Secretary shall, to the extent practicable,
14 issue or deny registration numbers under this
15 subtitle not later than 72 hours after the time
16 the Secretary receives a complete registration
17 application, unless the Secretary determines, in
18 the interest of national security, that additional
19 time is necessary to review an application.

20 “(B) NOTICE OF APPLICATION STATUS.—

21 In all cases, the Secretary shall notify persons
22 of the status of their application not later than
23 72 hours after the time the Secretary receives
24 a complete registration application.

25 “(4) EXPEDITED APPEALS PROCESS.—

1 “(A) REQUIREMENT.—

2 “(i) APPEALS PROCESS.—The Sec-
3 retary shall establish an expedited appeals
4 process for persons denied a registration
5 number under this subtitle.

6 “(ii) TIME PERIOD FOR RESOLU-
7 TION.—The Secretary shall, to the extent
8 practicable, resolve appeals not later than
9 72 hours after receiving a complete request
10 for appeal unless the Secretary determines,
11 in the interest of national security, that
12 additional time is necessary to resolve an
13 appeal.

14 “(B) CONSULTATION.—The Secretary, in
15 developing the appeals process under subpara-
16 graph (A), shall consult with appropriate stake-
17 holders.

18 “(C) GUIDANCE.—The Secretary shall pro-
19 vide guidance regarding the procedures and in-
20 formation required for an appeal under sub-
21 paragraph (A) to persons denied registration
22 numbers under this subtitle.

23 “(5) RESTRICTIONS ON USE AND MAINTENANCE
24 OF INFORMATION.—

1 “(A) IN GENERAL.—Information obtained
2 by the Secretary under this section may not be
3 made available to the public.

4 “(B) USE OF CERTAIN INFORMATION.—
5 Any information constituting grounds for denial
6 of a registration number under this section
7 shall be maintained confidentially by the Sec-
8 retary and may be used only for making deter-
9 minations under this section. Notwithstanding
10 any other provision of this subtitle, the Sec-
11 retary may share any such information with
12 Federal, State, local, and tribal law enforce-
13 ment agencies, as appropriate.

14 “(6) REGISTRATION INFORMATION.—

15 “(A) AUTHORITY TO REQUIRE INFORMA-
16 TION.—The Secretary may require a person ap-
17 plying for a registration number under this sub-
18 title to submit such information as may be nec-
19 essary to carry out the requirements of this sec-
20 tion.

21 “(B) REQUIREMENT TO UPDATE INFORMA-
22 TION.—The Secretary may require persons
23 issued a registration under this subtitle to up-
24 date registration information submitted to the
25 Secretary under this subtitle, as appropriate.

1 “(7) RE-CHECKS AGAINST TERRORIST WATCH
2 LIST.—

3 “(A) RE-CHECKS.—The Secretary shall, as
4 appropriate, re-check persons provided a reg-
5 istration number pursuant to this subtitle
6 against the terrorist watch list, and may revoke
7 such registration number if the Secretary deter-
8 mines such person may pose a threat to na-
9 tional security.

10 “(B) NOTICE OF REVOCATION.—The Sec-
11 retary shall, as appropriate, provide prior notice
12 to a person whose registration number is re-
13 voked under this section and such person shall
14 have an opportunity to appeal, as provided in
15 paragraph (4).

16 **“SEC. 899C. INSPECTION AND AUDITING OF RECORDS.**

17 “The Secretary shall establish a process for the peri-
18 odic inspection and auditing of the records maintained by
19 owners of ammonium nitrate facilities for the purpose of
20 monitoring compliance with such section or for the pur-
21 pose of deterring or preventing the misappropriation or
22 use of ammonium nitrate in an act of terrorism.

23 **“SEC. 899D. ADMINISTRATIVE PROVISIONS.**

24 “(a) COOPERATIVE AGREEMENTS.—The Secretary—

1 “(1) may enter into a cooperative agreement
2 with the Secretary of Agriculture, or the head of any
3 State department of agriculture or its designee in-
4 volved in agricultural regulation, in consultation with
5 the State agency responsible for homeland security,
6 to carry out the provisions of this subtitle; and

7 “(2) wherever possible, shall seek to cooperate
8 with State agencies or their designees that oversee
9 ammonium nitrate facility operations when seeking
10 cooperative agreements to implement the registra-
11 tion and enforcement provisions of this subtitle.

12 “(b) DELEGATION.—

13 “(1) AUTHORITY.—The Secretary may delegate
14 to a State the authority to assist the Secretary in
15 the administration and enforcement of this subtitle.

16 “(2) DELEGATION REQUIRED.—At the request
17 of a Governor of a State, the Secretary shall dele-
18 gate to the State the authority to carry out func-
19 tions under sections 899B and 899C, if the Sec-
20 retary determines that the State is capable of satis-
21 factorily carrying out such functions.

22 “(3) FUNDING.—Subject to the availability of
23 appropriations, if the Secretary enters into an agree-
24 ment with a State under this subsection to delegate
25 functions to the State, the Secretary shall provide to

1 the State sufficient funds to carry out the delegated
2 functions.

3 “(c) PROVISION OF GUIDANCE AND NOTIFICATION
4 MATERIALS TO AMMONIUM NITRATE FACILITIES.—

5 “(1) GUIDANCE.—The Secretary shall make
6 available to each owner of an ammonium nitrate fa-
7 cility registered under section 899B(c)(1) guidance
8 on—

9 “(A) the identification of suspicious ammo-
10 nium nitrate purchases or transfers or at-
11 tempted purchases or transfers;

12 “(B) the appropriate course of action to be
13 taken by the ammonium nitrate facility owner
14 with respect to such a purchase or transfer or
15 attempted purchase or transfer, including—

16 “(i) exercising the right of the owner
17 of the ammonium nitrate facility to decline
18 sale of ammonium nitrate; and

19 “(ii) notifying appropriate law en-
20 forcement entities; and

21 “(C) any such additional subjects as the
22 Secretary determines are appropriate to prevent
23 the misappropriation or use of ammonium ni-
24 trate in an act of terrorism.

1 “(2) USE OF MATERIALS AND PROGRAMS.—In
2 providing guidance under this subsection, the Sec-
3 retary shall, to the extent practicable, leverage any
4 relevant materials and programs.

5 “(3) NOTIFICATION MATERIALS.—

6 “(A) IN GENERAL.—The Secretary shall
7 make available materials suitable for posting at
8 ammonium nitrate facilities where ammonium
9 nitrate is sold.

10 “(B) DESIGN OF MATERIALS.—Such mate-
11 rials shall be designed to notify prospective am-
12 monium nitrate purchasers of—

13 “(i) the record-keeping requirements
14 under section 899B; and

15 “(ii) the penalties for violating such
16 requirements.

17 **“SEC. 899E. THEFT REPORTING REQUIREMENT.**

18 “Any person who is required to comply with section
19 899B(e) who has knowledge of the theft or unexplained
20 loss of ammonium nitrate shall report such theft or loss
21 to the appropriate Federal law enforcement authorities
22 within one calendar day of the date on which the person
23 becomes aware of such theft or loss. Upon receipt of such
24 report, the relevant Federal authorities shall inform State,
25 local, and tribal law enforcement entities as appropriate.

1 **“SEC. 899F. PROHIBITIONS AND PENALTY.**

2 “(a) PROHIBITIONS.—

3 “(1) TAKING POSSESSION.—No person shall
4 take possession of ammonium nitrate from an am-
5 monium nitrate facility unless such person is reg-
6 istered under subsection (c) or (d) of section 899B,
7 or is an agent of a person registered under sub-
8 section (c) or (d) of that section.

9 “(2) TRANSFERRING POSSESSION.—An owner
10 of an ammonium nitrate facility shall not transfer
11 possession of ammonium nitrate from the ammo-
12 nium nitrate facility to any person who is not reg-
13 istered under subsection (c) or (d) of section 899B,
14 unless such person is an agent of a person registered
15 under subsection (c) or (d) of that section.

16 “(3) OTHER PROHIBITIONS.—No person shall—

17 “(A) buy and take possession of ammo-
18 nium nitrate without a registration number re-
19 quired under subsection (c) or (d) of section
20 899B;

21 “(B) own or operate an ammonium nitrate
22 facility without a registration number required
23 under section 899B(c); or

24 “(C) fail to comply with any requirement
25 or violate any other prohibition under this sub-
26 title.

1 “(b) PROHIBITIONS.—No person shall—

2 “(1) buy and take possession of ammonium ni-
3 trate without a registration number required under
4 subsection (c) or (d) of section 899B;

5 “(2) own or operate an ammonium nitrate facil-
6 ity without a registration number required under
7 section 899B(c); or

8 “(3) fail to comply with any requirement or vio-
9 late any other prohibition under this subtitle.

10 “(c) CIVIL PENALTY.—A person that violates this
11 subtitle may be assessed a civil penalty by the Secretary
12 of not more than \$50,000 per violation.

13 “(d) PENALTY CONSIDERATIONS.—In determining
14 the amount of a civil penalty under this section, the Sec-
15 retary shall consider—

16 “(1) the nature and circumstances of the viola-
17 tion;

18 “(2) with respect to the person who commits
19 the violation, any history of prior violations, the abil-
20 ity to pay the penalty, and any effect the penalty is
21 likely to have on the ability of such person to do
22 business; and

23 “(3) any other matter that the Secretary deter-
24 mines that justice requires.

1 “(e) NOTICE AND OPPORTUNITY FOR A HEARING.—
2 No civil penalty may be assessed under this subtitle unless
3 the person liable for the penalty has been given notice and
4 an opportunity for a hearing on the violation for which
5 the penalty is to be assessed in the county, parish, or in-
6 corporated city of residence of that person.

7 “(f) DELAY IN APPLICATION OF PROHIBITION.—
8 Paragraphs (1) and (2) of subsection (a) shall apply be-
9 ginning 6 months after the issuance by the Secretary of
10 a final rule implementing this subtitle.

11 **“SEC. 899G. PROTECTION FROM CIVIL LIABILITY.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law, an owner of an ammonium nitrate facility
14 who in good faith refuses to sell or transfer ammonium
15 nitrate to any person, or who in good faith discloses to
16 the Department or to appropriate law enforcement au-
17 thorities an actual or attempted purchase or transfer,
18 based upon a reasonable belief that the person seeking
19 purchase or transfer of ammonium nitrate may use the
20 ammonium nitrate to create an explosive device to be em-
21 ployed in an act of terrorism (as defined in section 3077
22 of title 18, United States Code), or to use ammonium ni-
23 trate for any other unlawful purpose, shall be immune
24 from civil liability arising from that refusal to sell ammo-
25 nium nitrate or from making that disclosure.

1 “(b) LIMITATION.—Subsection (a) shall not be con-
2 strued to apply with respect to any refusal to sell or dislo-
3 sure—

4 “(1) that violates—

5 “(A) title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq); or

7 “(B) the Americans with Disabilities Act
8 of 1990 (42 U.S.C. 12101 et seq.); or

9 “(2) made on the basis that the person seeking
10 purchase or transfer of ammonium nitrate is a vet-
11 eran or member of the armed forces of the United
12 States.

13 **“SEC. 899H. PREEMPTION OF OTHER LAWS.**

14 “(a) OTHER FEDERAL REGULATIONS.—Except as
15 provided in section 899G, nothing in this subtitle affects
16 any regulation issued by any agency other than an agency
17 of the Department.

18 “(b) STATE LAW.—Subject to section 899G, this sub-
19 title preempts the laws of any State to the extent that
20 such laws are inconsistent with this subtitle, except that
21 this subtitle shall not preempt any State law that provides
22 additional protection against the acquisition of ammonium
23 nitrate by terrorists or the use of ammonium nitrate in
24 explosives in acts of terrorism or for other illicit purposes,
25 as determined by the Secretary.

1 **“SEC. 899I. DEADLINES FOR REGULATIONS.**

2 “The Secretary—

3 “(1) shall issue a proposed rule implementing
4 this subtitle within six months after the date of the
5 enactment of this subtitle; and

6 “(2) issue a final rule implementing this sub-
7 title within one year after such date of enactment.

8 **“SEC. 899J. AUTHORIZATION OF APPROPRIATIONS.**

9 “There are authorized to be appropriated to the Sec-
10 retary such sums as may be necessary to carry out this
11 subtitle for fiscal years 2007 through 2011.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of such Act is amended by adding at the
14 end of the items relating to title VIII the following new
15 items:

“Subtitle J—Secure Handling of Ammonium Nitrate

“Sec. 899A. Definitions.

“Sec. 899B. Regulation of the sale and transfer of ammonium nitrate.

“Sec. 899C. Inspection and auditing of records.

“Sec. 899D. Administrative provisions.

“Sec. 899E. Theft reporting requirement.

“Sec. 899F. Prohibitions and penalty.

“Sec. 899G. Protection from civil liability.

“Sec. 899H. Preemption of other laws.

“Sec. 899I. Deadlines for regulations.

“Sec. 899J. Authorization of appropriations.”.

Passed the House of Representatives October 23,
2007.

Attest:

LORRAINE C. MILLER,

Clerk.