

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, the functions of the President under section 1016(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) (the “Act”) are hereby assigned to the Director of National Intelligence (Director).

The Director shall perform such functions in a manner consistent with direction and guidance issued by the President, including (1) the Memorandum for the Heads of Executive Departments and Agencies of June 2, 2005, entitled “Strengthening Information Sharing, Access, and Integration—Organizational, Management, and Policy Development Structures for Creating the Terrorism Information Sharing Environment,” and (2) the Memorandum for the Heads of Executive Departments and Agencies of December 16, 2005, entitled “Guidelines and Requirements in Support of the Information Sharing Environment;” provided that the Director shall ensure that the official within the Office of the Director of National Intelligence previously designated as the program manager responsible for information sharing across the Federal Government pursuant to the Act shall be the assistant to the Director in carrying out the functions delegated by this memorandum.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

Memorandum of President of the United States, Sept. 8, 2007, 72 F.R. 52279, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting functions of the President under subsections (h) and (j) of section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53) (IRTPA), are hereby assigned to the Director of National Intelligence (Director). The Director shall consult the Secretaries of State, Defense, Energy, Homeland Security, and the Attorney General in performing such functions.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director information that the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Director shall perform such functions in a manner consistent with the President’s constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, and the performance of the Executive’s constitutional duties.

Any reference in this memorandum to the provision of IRTPA shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

The Director is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 486. Limitation of liability

A person who has completed a security awareness training course approved by or operated under a cooperative agreement with the Department of Homeland Security using funds made available in fiscal year 2006 and thereafter or in any prior appropriations Acts, who is enrolled in a program recognized or acknowledged by an Information Sharing and Analysis Center, and who

reports a situation, activity or incident pursuant to that program to an appropriate authority, shall not be liable for damages in any action brought in a Federal or State court which result from any act or omission unless such person is guilty of gross negligence or willful misconduct.

(Pub. L. 109-90, title V, §541, Oct. 18, 2005, 119 Stat. 2089.)

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2006, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART J—SECURE HANDLING OF AMMONIUM NITRATE

§ 488. Definitions

In this part:

(1) Ammonium nitrate

The term “ammonium nitrate” means—

(A) solid ammonium nitrate that is chiefly the ammonium salt of nitric acid and contains not less than 33 percent nitrogen by weight; and

(B) any mixture containing a percentage of ammonium nitrate that is equal to or greater than the percentage determined by the Secretary under section 488a(b) of this title.

(2) Ammonium nitrate facility

The term “ammonium nitrate facility” means any entity that produces, sells or otherwise transfers ownership of, or provides application services for ammonium nitrate.

(3) Ammonium nitrate purchaser

The term “ammonium nitrate purchaser” means any person who purchases ammonium nitrate from an ammonium nitrate facility.

(Pub. L. 107-296, title VIII, §899A, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2083.)

§ 488a. Regulation of the sale and transfer of ammonium nitrate

(a) In general

The Secretary shall regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility in accordance with this part to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

(b) Ammonium nitrate mixtures

Not later than 90 days after December 26, 2007, the Secretary, in consultation with the heads of appropriate Federal departments and agencies (including the Secretary of Agriculture), shall, after notice and an opportunity for comment, establish a threshold percentage for ammonium nitrate in a substance.

(c) Registration of owners of ammonium nitrate facilities

(1) Registration

The Secretary shall establish a process by which any person that—

(A) owns an ammonium nitrate facility is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

(2) Registration information

Any person applying to register under paragraph (1) shall submit to the Secretary—

(A) the name, address, and telephone number of each ammonium nitrate facility owned by that person;

(B) the name of the person designated by that person as the point of contact for each such facility, for purposes of this part; and

(C) such other information as the Secretary may determine is appropriate.

(d) Registration of ammonium nitrate purchasers

(1) Registration

The Secretary shall establish a process by which any person that—

(A) intends to be an ammonium nitrate purchaser is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

(2) Registration information

Any person applying to register under paragraph (1) as an ammonium nitrate purchaser shall submit to the Secretary—

(A) the name, address, and telephone number of the applicant; and

(B) the intended use of ammonium nitrate to be purchased by the applicant.

(e) Records

(1) Maintenance of records

The owner of an ammonium nitrate facility shall—

(A) maintain a record of each sale or transfer of ammonium nitrate, during the two-year period beginning on the date of that sale or transfer; and

(B) include in such record the information described in paragraph (2).

(2) Specific information required

For each sale or transfer of ammonium nitrate, the owner of an ammonium nitrate facility shall—

(A) record the name, address, telephone number, and registration number issued under subsection (c) or (d) of each person that purchases ammonium nitrate, in a manner prescribed by the Secretary;

(B) if applicable, record the name, address, and telephone number of an agent acting on behalf of the person described in subparagraph (A), at the point of sale;

(C) record the date and quantity of ammonium nitrate sold or transferred; and

(D) verify the identity of the persons described in subparagraphs (A) and (B), as applicable, in accordance with a procedure established by the Secretary.

(3) Protection of information

In maintaining records in accordance with paragraph (1), the owner of an ammonium nitrate facility shall take reasonable actions to

ensure the protection of the information included in such records.

(f) Exemption for explosive purposes

The Secretary may exempt from this part a person producing, selling, or purchasing ammonium nitrate exclusively for use in the production of an explosive under a license or permit issued under chapter 40 of title 18.

(g) Consultation

In carrying out this section, the Secretary shall consult with the Secretary of Agriculture, States, and appropriate private sector entities, to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

(h) Data confidentiality

(1) In general

Notwithstanding section 552 of title 5 or the USA PATRIOT ACT (Public Law 107-56; 115 Stat. 272), and except as provided in paragraph (2), the Secretary may not disclose to any person any information obtained under this part.

(2) Exception

The Secretary may disclose any information obtained by the Secretary under this part to—

(A) an officer or employee of the United States, or a person that has entered into a contract with the United States, who has a duty to know the information to perform the duties of the officer, employee, or person; or

(B) to a State agency under section 488c of this title, under appropriate arrangements to ensure the protection of the information.

(i) Registration procedures and check of terrorist screening database

(1) Registration procedures

(A) Generally

The Secretary shall establish procedures to efficiently receive applications for registration numbers under this part, conduct the checks required under paragraph (2), and promptly issue or deny a registration number.

(B) Initial six-month registration period

The Secretary shall take steps to maximize the number of registration applications that are submitted and processed during the six-month period described in section 488e(e) of this title.

(2) Check of terrorist screening database

(A) Check required

The Secretary shall conduct a check of appropriate identifying information of any person seeking to register with the Department under subsection (c) or (d) against identifying information that appears in the terrorist screening database of the Department.

(B) Authority to deny registration number

If the identifying information of a person seeking to register with the Department under subsection (c) or (d) appears in the terrorist screening database of the Department, the Secretary may deny issuance of a registration number under this part.

(3) Expedited review of applications**(A) In general**

Following the six-month period described in section 488e(e) of this title, the Secretary shall, to the extent practicable, issue or deny registration numbers under this part not later than 72 hours after the time the Secretary receives a complete registration application, unless the Secretary determines, in the interest of national security, that additional time is necessary to review an application.

(B) Notice of application status

In all cases, the Secretary shall notify a person seeking to register with the Department under subsection (c) or (d) of the status of the application of that person not later than 72 hours after the time the Secretary receives a complete registration application.

(4) Expedited appeals process**(A) Requirement****(i) Appeals process**

The Secretary shall establish an expedited appeals process for persons denied a registration number under this part.

(ii) Time period for resolution

The Secretary shall, to the extent practicable, resolve appeals not later than 72 hours after receiving a complete request for appeal unless the Secretary determines, in the interest of national security, that additional time is necessary to resolve an appeal.

(B) Consultation

The Secretary, in developing the appeals process under subparagraph (A), shall consult with appropriate stakeholders.

(C) Guidance

The Secretary shall provide guidance regarding the procedures and information required for an appeal under subparagraph (A) to any person denied a registration number under this part.

(5) Restrictions on use and maintenance of information**(A) In general**

Any information constituting grounds for denial of a registration number under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section.

(B) Sharing of information

Notwithstanding any other provision of this part, the Secretary may share any such information with Federal, State, local, and tribal law enforcement agencies, as appropriate.

(6) Registration information**(A) Authority to require information**

The Secretary may require a person applying for a registration number under this part to submit such information as may be necessary to carry out the requirements of this section.

(B) Requirement to update information

The Secretary may require persons issued a registration under this part to update registration information submitted to the Secretary under this part, as appropriate.

(7) Re-checks against terrorist screening database**(A) Re-checks**

The Secretary shall, as appropriate, re-check persons provided a registration number pursuant to this part against the terrorist screening database of the Department, and may revoke such registration number if the Secretary determines such person may pose a threat to national security.

(B) Notice of revocation

The Secretary shall, as appropriate, provide prior notice to a person whose registration number is revoked under this section and such person shall have an opportunity to appeal, as provided in paragraph (4).

(Pub. L. 107-296, title VIII, § 899B, as added Pub. L. 110-161, div. E, title V, § 563(a), Dec. 26, 2007, 121 Stat. 2084.)

REFERENCES IN TEXT

The USA PATRIOT ACT, referred to in subsec. (h)(1), is Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

§ 488b. Inspection and auditing of records

The Secretary shall establish a process for the periodic inspection and auditing of the records maintained by owners of ammonium nitrate facilities for the purpose of monitoring compliance with this part or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

(Pub. L. 107-296, title VIII, § 899C, as added Pub. L. 110-161, div. E, title V, § 563(a), Dec. 26, 2007, 121 Stat. 2087.)

§ 488c. Administrative provisions**(a) Cooperative agreements**

The Secretary—

(1) may enter into a cooperative agreement with the Secretary of Agriculture, or the head of any State department of agriculture or its designee involved in agricultural regulation, in consultation with the State agency responsible for homeland security, to carry out the provisions of this part; and

(2) wherever possible, shall seek to cooperate with State agencies or their designees that oversee ammonium nitrate facility operations when seeking cooperative agreements to implement the registration and enforcement provisions of this part.

(b) Delegation**(1) Authority**

The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this part.

(2) Delegation required

At the request of a Governor of a State, the Secretary shall delegate to that State the authority to carry out functions under sections 488a and 488b of this title, if the Secretary determines that the State is capable of satisfactorily carrying out such functions.

(3) Funding

Subject to the availability of appropriations, if the Secretary delegates functions to a State under this subsection, the Secretary shall provide to that State sufficient funds to carry out the delegated functions.

(c) Provision of guidance and notification materials to ammonium nitrate facilities**(1) Guidance**

The Secretary shall make available to each owner of an ammonium nitrate facility registered under section 488a(c)(1) of this title guidance on—

(A) the identification of suspicious ammonium nitrate purchases or transfers or attempted purchases or transfers;

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

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

(ii) notifying appropriate law enforcement entities; and

(C) additional subjects determined appropriate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

(2) Use of materials and programs

In providing guidance under this subsection, the Secretary shall, to the extent practicable, leverage any relevant materials and programs.

(3) Notification materials**(A) In general**

The Secretary shall make available materials suitable for posting at locations where ammonium nitrate is sold.

(B) Design of materials

Materials made available under subparagraph (A) shall be designed to notify prospective ammonium nitrate purchasers of—

(i) the record-keeping requirements under section 488a of this title; and

(ii) the penalties for violating such requirements.

(Pub. L. 107-296, title VIII, §899D, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2087.)

§ 488d. Theft reporting requirement

Any person who is required to comply with section 488a(e) of this title who has knowledge of the theft or unexplained loss of ammonium nitrate shall report such theft or loss to the appropriate Federal law enforcement authorities not later than 1 calendar day of the date on which

the person becomes aware of such theft or loss. Upon receipt of such report, the relevant Federal authorities shall inform State, local, and tribal law enforcement entities, as appropriate.

(Pub. L. 107-296, title VIII, §899E, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2088.)

§ 488e. Prohibitions and penalty**(a) Prohibitions****(1) Taking possession**

No person shall purchase ammonium nitrate from an ammonium nitrate facility unless such person is registered under subsection (c) or (d) of section 488a of this title, or is an agent of a person registered under subsection (c) or (d) of that section.

(2) Transferring possession

An owner of an ammonium nitrate facility shall not transfer possession of ammonium nitrate from the ammonium nitrate facility to any ammonium nitrate purchaser who is not registered under subsection (c) or (d) of section 488a of this title, or to any agent acting on behalf of an ammonium nitrate purchaser when such purchaser is not registered under subsection (c) or (d) of section 488a of this title.

(3) Other prohibitions

No person shall—

(A) purchase ammonium nitrate without a registration number required under subsection (c) or (d) of section 488a of this title;

(B) own or operate an ammonium nitrate facility without a registration number required under section 488a(c) of this title; or

(C) fail to comply with any requirement or violate any other prohibition under this part.

(b) Civil penalty

A person that violates this part may be assessed a civil penalty by the Secretary of not more than \$50,000 per violation.

(c) Penalty considerations

In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature and circumstances of the violation;

(2) with respect to the person who commits the violation, any history of prior violations, the ability to pay the penalty, and any effect the penalty is likely to have on the ability of such person to do business; and

(3) any other matter that the Secretary determines that justice requires.

(d) Notice and opportunity for a hearing

No civil penalty may be assessed under this part unless the person liable for the penalty has been given notice and an opportunity for a hearing on the violation for which the penalty is to be assessed in the county, parish, or incorporated city of residence of that person.

(e) Delay in application of prohibition

Paragraphs (1) and (2) of subsection (a) shall apply on and after the date that is 6 months

after the date that the Secretary issues a final rule implementing this part.

(Pub. L. 107-296, title VIII, §899F, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2088.)

§ 488f. Protection from civil liability

(a) In general

Notwithstanding any other provision of law, an owner of an ammonium nitrate facility that in good faith refuses to sell or transfer ammonium nitrate to any person, or that in good faith discloses to the Department or to appropriate law enforcement authorities an actual or attempted purchase or transfer of ammonium nitrate, based upon a reasonable belief that the person seeking purchase or transfer of ammonium nitrate may use the ammonium nitrate to create an explosive device to be employed in an act of terrorism (as defined in section 3077 of title 18), or to use ammonium nitrate for any other unlawful purpose, shall not be liable in any civil action relating to that refusal to sell ammonium nitrate or that disclosure.

(b) Reasonable belief

A reasonable belief that a person may use ammonium nitrate to create an explosive device to be employed in an act of terrorism under subsection (a) may not solely be based on the race, sex, national origin, creed, religion, status as a veteran, or status as a member of the Armed Forces of the United States of that person.

(Pub. L. 107-296, title VIII, §899G, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

§ 488g. Preemption of other laws

(a) Other Federal regulations

Except as provided in section 488f of this title, nothing in this part affects any regulation issued by any agency other than an agency of the Department.

(b) State law

Subject to section 488f of this title, this part preempts the laws of any State to the extent that such laws are inconsistent with this part, except that this part shall not preempt any State law that provides additional protection against the acquisition of ammonium nitrate by terrorists or the use of ammonium nitrate in explosives in acts of terrorism or for other illicit purposes, as determined by the Secretary.

(Pub. L. 107-296, title VIII, §899H, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

§ 488h. Deadlines for regulations

The Secretary—

(1) shall issue a proposed rule implementing this part not later than 6 months after December 26, 2007; and

(2) issue a final rule implementing this part not later than 1 year after December 26, 2007.

(Pub. L. 107-296, title VIII, §899I, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

§ 488i. Authorization of appropriations

There are authorized to be appropriated to the Secretary—

(1) \$2,000,000 for fiscal year 2008; and

(2) \$10,750,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-296, title VIII, §899J, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2090.)

SUBCHAPTER IX—NATIONAL HOMELAND SECURITY COUNCIL

§ 491. National Homeland Security Council

There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this subchapter referred to as the “Council”).

(Pub. L. 107-296, title IX, §901, Nov. 25, 2002, 116 Stat. 2258.)

§ 492. Function

The function of the Council shall be to advise the President on homeland security matters.

(Pub. L. 107-296, title IX, §902, Nov. 25, 2002, 116 Stat. 2258.)

§ 493. Membership

(a) Members

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

(b) Attendance of Chairman of Joint Chiefs of Staff at meetings

The Chairman of the Joint Chiefs of Staff (or, in the absence of the Chairman, the Vice Chairman of the Joint Chiefs of Staff) may, in the role of the Chairman of the Joint Chiefs of Staff as principal military adviser to the Council and subject to the direction of the President, attend and participate in meetings of the Council.

(Pub. L. 107-296, title IX, §903, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 109-163, div. A, title IX, §908(b), Jan. 6, 2006, 119 Stat. 3404.)

AMENDMENTS

2006—Pub. L. 109-163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 494. Other functions and activities

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to¹ make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to¹

¹ So in original. The word “to” probably should not appear.