

110TH CONGRESS
1ST SESSION

S. 1463

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.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2007

Mr. PRYOR (for himself, Mr. COCHRAN, Mr. CRAIG, Mr. ROBERTS, Mr. SCHUMER, and Mr. CHAMBLISS) 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 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

2 (a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by
3 adding at the end the following:

4
5 **“Subtitle J—Secure Handling of**
6 **Ammonium Nitrate**

7 **“SEC. 899A. DEFINITIONS.**

8 “In this subtitle:

9 “(1) AMMONIUM NITRATE.—The term ‘ammo-
10 nium nitrate’ means—

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

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

19 “(2) AMMONIUM NITRATE FACILITY.—The term
20 ‘ammonium nitrate facility’ means any entity that
21 produces, sells or otherwise transfers ownership of,
22 or provides application services for ammonium ni-
23 trate.

24 “(3) AMMONIUM NITRATE PURCHASER.—The
25 term ‘ammonium nitrate purchaser’ means any per-

1 son who buys and takes possession of ammonium ni-
2 trate from an ammonium nitrate facility.

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.—Not later
11 than 90 days after the date of the enactment of this sub-
12 title, the Secretary, in consultation with the heads of ap-
13 propriate Federal departments and agencies (including the
14 Secretary of Agriculture), shall, after notice and an oppor-
15 tunity for comment, establish a threshold percentage for
16 ammonium nitrate in a substance.

17 “(c) REGISTRATION OF OWNERS OF AMMONIUM NI-
18 TRATE FACILITIES.—

19 “(1) REGISTRATION.—The Secretary shall es-
20 tablish a process by which any person that—

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

23 “(B) registers under subparagraph (A) is
24 issued a registration number for purposes of
25 this subtitle.

1 “(2) REGISTRATION INFORMATION.—Any per-
2 son applying to register under paragraph (1) shall
3 submit to the Secretary—

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

7 “(B) the name of the person designated by
8 that person as the point of contact for each
9 such facility, for purposes of this subtitle; and

10 “(C) such other information as the Sec-
11 retary may determine is appropriate.

12 “(d) REGISTRATION OF AMMONIUM NITRATE PUR-
13 CHASERS.—

14 “(1) REGISTRATION.—The Secretary shall es-
15 tablish a process by which any person that—

16 “(A) intends to be an ammonium nitrate
17 purchaser is required to register with the De-
18 partment; and

19 “(B) registers under subparagraph (A) is
20 issued a registration number for purposes of
21 this subtitle.

22 “(2) REGISTRATION INFORMATION.—Any per-
23 son applying to register under paragraph (1) as an
24 ammonium nitrate purchaser shall submit to the
25 Secretary—

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

3 “(B) the intended use of ammonium ni-
4 trate to be purchased by the applicant.

5 “(e) RECORDS.—

6 “(1) MAINTENANCE OF RECORDS.—The owner
7 of an ammonium nitrate facility shall—

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

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

14 “(2) SPECIFIC INFORMATION REQUIRED.—For
15 each sale or transfer of ammonium nitrate, the
16 owner of an ammonium nitrate facility shall—

17 “(A) record the name, address, telephone
18 number, and registration number issued under
19 subsection (c) or (d) of each person that takes
20 possession of ammonium nitrate, in a manner
21 prescribed by the Secretary;

22 “(B) if applicable, record the name, ad-
23 dress, and telephone number of each individual
24 who takes possession of the ammonium nitrate

1 on behalf of the person described in subpara-
2 graph (A), at the point of sale;

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

5 “(D) verify the identity of the persons de-
6 scribed in subparagraphs (A) and (B), as appli-
7 cable, in accordance with a procedure estab-
8 lished by the Secretary.

9 “(3) PROTECTION OF INFORMATION.—In main-
10 taining records in accordance with paragraph (1),
11 the owner of an ammonium nitrate facility shall take
12 reasonable actions to ensure the protection of the in-
13 formation included in such records.

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

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

24 “(h) DATA CONFIDENTIALITY.—

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

7 “(2) EXCEPTION.—The Secretary may disclose
8 any information obtained by the Secretary under
9 this subtitle to—

10 “(A) an officer or employee of the United
11 States, or a person that has entered into a con-
12 tract with the United States, who has a need to
13 know the information to perform the duties of
14 the officer, employee, or person; or

15 “(B) to a State agency under section
16 899D, under appropriate arrangements to en-
17 sure the protection of the information.

18 “(i) REGISTRATION PROCEDURES AND CHECK OF
19 TERRORIST SCREENING DATABASE.—

20 “(1) REGISTRATION PROCEDURES.—

21 “(A) GENERALLY.—The Secretary shall
22 establish procedures to efficiently receive appli-
23 cations for registration numbers under this sub-
24 title, conduct the checks required under para-

1 graph (2), and promptly issue or deny a reg-
2 istration number.

3 “(B) INITIAL SIX-MONTH REGISTRATION
4 PERIOD.—The Secretary shall take steps to
5 maximize the number of registration applica-
6 tions that are submitted and processed during
7 the six-month period described in section
8 899F(e).

9 “(2) CHECK OF TERRORIST SCREENING DATA-
10 BASE.—

11 “(A) CHECK REQUIRED.—The Secretary
12 shall conduct a check of appropriate identifying
13 information of any person seeking to register
14 with the Department under subsection (c) or
15 (d) against identifying information that appears
16 in the terrorist screening database of the De-
17 partment.

18 “(B) AUTHORITY TO DENY REGISTRATION
19 NUMBER.—If the identifying information of a
20 person seeking to register with the Department
21 under subsection (c) or (d) appears in the ter-
22 rorist screening database of the Department,
23 the Secretary may deny issuance of a registra-
24 tion number under this subtitle.

25 “(3) EXPEDITED REVIEW OF APPLICATIONS.—

1 “(A) IN GENERAL.—Following the six-
2 month period described in section 899F(e), the
3 Secretary shall, to the extent practicable, issue
4 or deny registration numbers under this subtitle
5 not later than 72 hours after the time the Sec-
6 retary receives a complete registration applica-
7 tion, unless the Secretary determines, in the in-
8 terest of national security, that additional time
9 is necessary to review an application.

10 “(B) NOTICE OF APPLICATION STATUS.—
11 In all cases, the Secretary shall notify a person
12 seeking to register with the Department under
13 subsection (c) or (d) of the status of the appli-
14 cation of that person not later than 72 hours
15 after the time the Secretary receives a complete
16 registration application.

17 “(4) EXPEDITED APPEALS PROCESS.—

18 “(A) REQUIREMENT.—

19 “(i) APPEALS PROCESS.—The Sec-
20 retary shall establish an expedited appeals
21 process for persons denied a registration
22 number under this subtitle.

23 “(ii) TIME PERIOD FOR RESOLU-
24 TION.—The Secretary shall, to the extent
25 practicable, resolve appeals not later than

1 72 hours after receiving a complete request
2 for appeal unless the Secretary determines,
3 in the interest of national security, that
4 additional time is necessary to resolve an
5 appeal.

6 “(B) CONSULTATION.—The Secretary, in
7 developing the appeals process under subpara-
8 graph (A), shall consult with appropriate stake-
9 holders.

10 “(C) GUIDANCE.—The Secretary shall pro-
11 vide guidance regarding the procedures and in-
12 formation required for an appeal under sub-
13 paragraph (A) to any person denied a registra-
14 tion number under this subtitle.

15 “(5) RESTRICTIONS ON USE AND MAINTENANCE
16 OF INFORMATION.—

17 “(A) IN GENERAL.—Any information con-
18 stituting grounds for denial of a registration
19 number under this section shall be maintained
20 confidentially by the Secretary and may be used
21 only for making determinations under this sec-
22 tion.

23 “(B) SHARING OF INFORMATION.—Not-
24 withstanding any other provision of this sub-
25 title, the Secretary may share any such infor-

1 mation with Federal, State, local, and tribal law
2 enforcement agencies, as appropriate.

3 “(6) REGISTRATION INFORMATION.—

4 “(A) AUTHORITY TO REQUIRE INFORMA-
5 TION.—The Secretary may require a person ap-
6 plying for a registration number under this sub-
7 title to submit such information as may be nec-
8 essary to carry out the requirements of this sec-
9 tion.

10 “(B) REQUIREMENT TO UPDATE INFORMA-
11 TION.—The Secretary may require persons
12 issued a registration under this subtitle to up-
13 date registration information submitted to the
14 Secretary under this subtitle, as appropriate.

15 “(7) RE-CHECKS AGAINST TERRORIST SCREEN-
16 ING DATABASE.—

17 “(A) RE-CHECKS.—The Secretary shall, as
18 appropriate, recheck persons provided a reg-
19 istration number pursuant to this subtitle
20 against the terrorist screening database of the
21 Department, and may revoke such registration
22 number if the Secretary determines such person
23 may pose a threat to national security.

24 “(B) NOTICE OF REVOCATION.—The Sec-
25 retary shall, as appropriate, provide prior notice

1 to a person whose registration number is re-
2 voked under this section and such person shall
3 have an opportunity to appeal, as provided in
4 paragraph (4).

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

6 “The Secretary shall establish a process for the peri-
7 odic inspection and auditing of the records maintained by
8 owners of ammonium nitrate facilities for the purpose of
9 monitoring compliance with this subtitle or for the purpose
10 of deterring or preventing the misappropriation or use of
11 ammonium nitrate in an act of terrorism.

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

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

14 “(1) may enter into a cooperative agreement
15 with the Secretary of Agriculture, or the head of any
16 State department of agriculture or its designee in-
17 volved in agricultural regulation, in consultation with
18 the State agency responsible for homeland security,
19 to carry out the provisions of this subtitle; and

20 “(2) wherever possible, shall seek to cooperate
21 with State agencies or their designees that oversee
22 ammonium nitrate facility operations when seeking
23 cooperative agreements to implement the registra-
24 tion and enforcement provisions of this subtitle.

25 “(b) DELEGATION.—

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

4 “(2) DELEGATION REQUIRED.—At the request
5 of a Governor of a State, the Secretary shall dele-
6 gate to that State the authority to carry out func-
7 tions under sections 899B and 899C, if the Sec-
8 retary determines that the State is capable of satis-
9 factorily carrying out such functions.

10 “(3) FUNDING.—Subject to the availability of
11 appropriations, if the Secretary delegates functions
12 to a State under this subsection, the Secretary shall
13 provide to that State sufficient funds to carry out
14 the delegated functions.

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

17 “(1) GUIDANCE.—The Secretary shall make
18 available to each owner of an ammonium nitrate fa-
19 cility registered under section 899B(c)(1) guidance
20 on—

21 “(A) the identification of suspicious ammo-
22 nium nitrate purchases or transfers or at-
23 tempted purchases or transfers;

24 “(B) the appropriate course of action to be
25 taken by the ammonium nitrate facility owner

1 with respect to such a purchase or transfer or
2 attempted purchase or transfer, including—

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

6 “(ii) notifying appropriate law en-
7 forcement entities; and

8 “(C) additional subjects determined appro-
9 priate by to prevent the misappropriation or use
10 of ammonium nitrate in an act of terrorism.

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

15 “(3) NOTIFICATION MATERIALS.—

16 “(A) IN GENERAL.—The Secretary shall
17 make available materials suitable for posting at
18 locations where ammonium nitrate is sold.

19 “(B) DESIGN OF MATERIALS.—Materials
20 made available under subparagraph (A) shall be
21 designed to notify prospective ammonium ni-
22 trate purchasers of—

23 “(i) the record-keeping requirements
24 under section 899B; and

1 “(ii) the penalties for violating such
2 requirements.

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

4 “Any person who is required to comply with section
5 899B(e) who has knowledge of the theft or unexplained
6 loss of ammonium nitrate shall report such theft or loss
7 to the appropriate Federal law enforcement authorities not
8 later than 1 calendar day of the date on which the person
9 becomes aware of such theft or loss. Upon receipt of such
10 report, the relevant Federal authorities shall inform State,
11 local, and tribal law enforcement entities, as appropriate.

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

13 “(a) PROHIBITIONS.—

14 “(1) TAKING POSSESSION.—No person shall
15 take possession of ammonium nitrate from an am-
16 monium nitrate facility unless such person is reg-
17 istered under subsection (c) or (d) of section 899B,
18 or is an agent of a person registered under sub-
19 section (c) or (d) of that section.

20 “(2) TRANSFERRING POSSESSION.—An owner
21 of an ammonium nitrate facility shall not transfer
22 possession of ammonium nitrate from the ammo-
23 nium nitrate facility to any person who is not reg-
24 istered under subsection (c) or (d) of section 899B,

1 or is not an agent of a person registered under sub-
2 section (c) or (d) of that section.

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

4 “(A) buy and take possession of ammo-
5 nium nitrate without a registration number re-
6 quired under subsection (c) or (d) of section
7 899B;

8 “(B) own or operate an ammonium nitrate
9 facility without a registration number required
10 under section 899B(c); or

11 “(C) fail to comply with any requirement
12 or violate any other prohibition under this sub-
13 title.

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

17 “(c) PENALTY CONSIDERATIONS.—In determining
18 the amount of a civil penalty under this section, the Sec-
19 retary shall consider—

20 “(1) the nature and circumstances of the viola-
21 tion;

22 “(2) with respect to the person who commits
23 the violation, any history of prior violations, the abil-
24 ity to pay the penalty, and any effect the penalty is

1 likely to have on the ability of such person to do
2 business; and

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

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

11 “(e) DELAY IN APPLICATION OF PROHIBITION.—
12 Paragraphs (1) and (2) of subsection (a) shall apply on
13 and after the date that is 6 months after the date that
14 the Secretary issues of a final rule implementing this sub-
15 title.

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

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of law, an owner of an ammonium nitrate facility
19 that in good faith refuses to sell or transfer ammonium
20 nitrate to any person, or that in good faith discloses to
21 the Department or to appropriate law enforcement au-
22 thorities an actual or attempted purchase or transfer of
23 ammonium nitrate, based upon a reasonable belief that
24 the person seeking purchase or transfer of ammonium ni-
25 trate may use the ammonium nitrate to create an explosive

1 device to be employed in an act of terrorism (as defined
2 in section 3077 of title 18, United States Code), or to use
3 ammonium nitrate for any other unlawful purpose, shall
4 not be liable in any civil action relating to that refusal
5 to sell ammonium nitrate or that disclosure.

6 “(b) REASONABLE BELIEF.—A reasonable belief that
7 a person may use ammonium nitrate to create an explosive
8 device to be employed in an act of terrorism under sub-
9 section (a) may not solely be based on the race, sex, na-
10 tional origin, creed, religion, status as a veteran, or status
11 as a member of the Armed Forces of the United States
12 of that person.

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 not later than 6 months after the date
5 of the enactment of this subtitle; and

6 “(2) issue a final rule implementing this sub-
7 title not later than 1 year after such date of enact-
8 ment.

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

10 “There are authorized to be appropriated to the Sec-
11 retary such sums as are necessary to carry out this sub-
12 title for each of fiscal years 2007 through 2011.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 in section 1(b) of such Act is amended by inserting after
15 the item relating to section 899 the following:

“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.”.

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