

110TH CONGRESS
1ST SESSION

H. R. 1680

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2007

Mr. THOMPSON of Mississippi (for himself, Mr. KING of New York, Mr. LANGEVIN, Mr. McCAUL of Texas, Mr. ETHERIDGE, Mr. DENT, Ms. LORETTA SANCHEZ of California, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Homeland Security

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.

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 Secu-
3 rity Act of 2002 (6 U.S.C. 361 et seq.) is amended by
4 adding at the end the following new subtitle:

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

7 **“SEC. 899A. DEFINITIONS.**

8 “In this subtitle, the following definitions apply:

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

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

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

18 “(2) The term ‘ammonium nitrate facility’
19 means any site where ammonium nitrate is produced
20 or sold.

21 “(3) The term ‘ammonium nitrate purchaser’
22 means any person who buys and takes ownership of
23 ammonium nitrate.

1 **“SEC. 899B. REGULATION OF HANDLING AND PURCHASE OF**
2 **AMMONIUM NITRATE.**

3 “(a) IN GENERAL.—The Secretary shall regulate the
4 purchase and sale of ammonium nitrate in accordance
5 with this subtitle to prevent the misappropriation or use
6 of ammonium nitrate in an act of terrorism.

7 “(b) AMMONIUM NITRATE MIXTURES.—The Sec-
8 retary shall, through notice and comment and by no later
9 than 90 days after the date of the enactment of this sub-
10 title, establish a threshold percentage for ammonium ni-
11 trate in a substance. If a substance contains a percentage
12 of ammonium nitrate that is equal to or greater than the
13 percentage established by the Secretary, the substance
14 shall be treated as ammonium nitrate for the purposes of
15 this subtitle.

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

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

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

23 “(B) upon such registration, such person
24 is issued a registration number for purposes of
25 this subtitle.

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

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

8 “(B) the name of the person designated by
9 the owner of the ammonium nitrate facility as
10 the point of contact of such facility, for pur-
11 poses of this subtitle;

12 “(C) for each such facility, the amount of
13 ammonium nitrate that is sold or transferred
14 during each year; and

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

17 “(d) REGISTRATION OF AMMONIUM NITRATE PUR-
18 CHASERS.—

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

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

1 “(B) upon such registration, such person
2 is issued a registration number for purposes of
3 this subtitle.

4 “(2) REGISTRATION INFORMATION.—The Sec-
5 retary shall require that each applicant for registra-
6 tion under this subsection as a prospective ammo-
7 nium nitrate purchaser must submit to the Sec-
8 retary the name, address, and telephone number of
9 the applicant.

10 “(e) RECORDS.—

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

15 “(A) maintain a record of each sale or
16 transfer of ownership of ammonium nitrate,
17 during the three-year period beginning on the
18 date of such sale or transfer; and

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

21 “(2) SPECIFIC INFORMATION REQUIRED.—For
22 each such sale or transfer, the Secretary shall re-
23 quire that the owner of an ammonium nitrate facil-
24 ity shall—

1 “(A) record the name, address, telephone
2 number, and registration number issued under
3 subsection (d) of each person that takes owner-
4 ship of ammonium nitrate from the owner of
5 the facility, in a manner prescribed by the Sec-
6 retary;

7 “(B) if applicable, record the name, ad-
8 dress, and telephone number of each individual
9 who takes possession of the ammonium nitrate
10 on behalf of the person referred to in subpara-
11 graph (A), at the point of sale;

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

14 “(D) verify the identity of the persons re-
15 ferred to in subparagraphs (A) and (B), as ap-
16 plicable, in accordance with a procedure estab-
17 lished by the Secretary.

18 “(3) PROTECTION OF INFORMATION.—In main-
19 taining records in accordance with paragraph (1),
20 the owner of an ammonium nitrate facility shall take
21 reasonable actions to ensure the protection of the in-
22 formation included in such records.

23 “(f) EXEMPTION FOR EXPLOSIVE PURPOSES.—The
24 Secretary may exempt from this subtitle a person pro-
25 ducing, selling, or purchasing ammonium nitrate exclu-

1 sively for use as an explosive material under a license
2 issued under chapter 40 of title 18, United States Code.

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

8 “(h) DATA CONFIDENTIALITY.—

9 “(1) IN GENERAL.—Notwithstanding section
10 552 of title 5, United States Code, or the USA PA-
11 TRIOT ACT (Public Law 107–56; 115 Stat. 272),
12 and except as provided in paragraph (2), the Sec-
13 retary may not disclose to any person any informa-
14 tion obtained under this subtitle.

15 “(2) EXCEPTION.—The Secretary may disclose
16 any information obtained by the Secretary under
17 this subtitle to an officer or employee of the United
18 States, or a person that has entered into a contract
19 with the United States, who has a need to know the
20 information to perform the duties of the officer, em-
21 ployee, or person, or to a State agency pursuant to
22 section 899D, under appropriate arrangements to
23 ensure the protection of the information.

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

2 “The Secretary shall establish a process for the peri-
3 odic inspection and auditing of the records maintained by
4 owners of ammonium nitrate facilities for the purpose of
5 monitoring compliance with such section or for the pur-
6 pose of deterring or preventing the misappropriation or
7 use of ammonium nitrate in an act of terrorism.

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

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

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

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

21 “(b) DELEGATION.—

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

25 “(2) DELEGATION REQUIRED.—At the request
26 of a Governor of a State, the Secretary shall dele-

1 gate to the State the authority to carry out func-
2 tions under sections 899B and 899C, if the Sec-
3 retary determines that the State is capable of satis-
4 factorily carrying out such functions.

5 “(3) FUNDING.—Subject to the availability of
6 appropriations, if the Secretary enters into an agree-
7 ment with a State under this subsection to delegate
8 functions to the State, the Secretary shall provide to
9 the State sufficient funds to carry out the delegated
10 functions.

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

13 “(1) GUIDANCE.—The Secretary shall make
14 available to each owner of an ammonium nitrate fa-
15 cility registered under section 899B(c)(1) guidance
16 on—

17 “(A) the identification of suspicious ammo-
18 nium nitrate purchases or attempted purchases;

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

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

1 “(ii) notifying appropriate law en-
2 forcement entities; and

3 “(C) any such additional subjects as the
4 Secretary determines are appropriate to prevent
5 the misappropriation or use of ammonium ni-
6 trate in an act of terrorism.

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

11 “(3) NOTIFICATION MATERIALS.—

12 “(A) IN GENERAL.—The Secretary shall
13 make available materials suitable for posting at
14 ammonium nitrate facilities where ammonium
15 nitrate is sold.

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

19 “(i) the record-keeping requirements
20 under section 899B; and

21 “(ii) the penalties for violating such
22 requirements.

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

24 “Any person who is required to comply with section
25 899B(e) who has knowledge of the theft or unexplained

1 loss of ammonium nitrate shall report such theft or loss
2 to the appropriate Federal law enforcement authorities
3 within one calendar day of the date on which the person
4 becomes aware of such theft or loss.

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

6 “(a) PROHIBITIONS.—No person shall—

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

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

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

15 “(b) IN GENERAL.—A person that violates this sub-
16 title may be assessed a civil penalty by the Secretary of
17 not more than \$50,000 per violation.

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

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

23 “(2) with respect to the person who commits
24 the violation, any history of prior violations, the abil-
25 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 ON
12 OWNERS OF FACILITIES.—Subsection (a)(2) shall apply
13 beginning 6 months after the issuance by the Secretary
14 of a final rule implementing this subtitle.

15 **“SEC. 899G. PREEMPTION OF OTHER LAWS.**

16 “(a) OTHER FEDERAL REGULATIONS.—Nothing in
17 this subtitle affects any regulation issued by any agency
18 other than an agency of the Department.

19 “(b) STATE LAW.—This subtitle preempts the laws
20 of any State to the extent that such laws are inconsistent
21 with this subtitle, except that this subtitle shall not pre-
22 empt any State law that provides additional protection
23 against the acquisition of ammonium nitrate by terrorists
24 or the use of ammonium nitrate in explosives in acts of
25 terrorism, as determined by the Secretary.

1 **“SEC. 899H. 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. 899I. 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 the following new items:

“Subtitle J—Secure Handling of Ammonium Nitrate

“Sec. 899A. Definitions.

“Sec. 899B. Regulation of handling and purchase 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. Preemption of other laws.

“Sec. 899H. Deadlines for regulations.

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

○