

**Authorizing Statute for the Ammonium Nitrate Security Program:
Consolidated Appropriations Act of 2008 § 563,
P.L. 110—161 (2007)**

SECTION 563. SECURE HANDLING OF AMMONIUM NITRATE

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

“Subtitle J—Secure Handling of Ammonium Nitrate

SECTION 899A. DEFINITIONS.

In this subtitle:

- (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 899B(b).
- (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.

SECTION 899B. 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 subtitle to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.
- (b) AMMONIUM NITRATE MIXTURES.—Not later than 90 days after the date of the enactment of this subtitle, 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

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- (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 subtitle.
- (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 subtitle; 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 subtitle.
- (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 subtitle 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, United States Code.
- (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, United States Code, 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 subtitle.
- (2) EXCEPTION.—The Secretary may disclose any information obtained by the Secretary under this subtitle 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 need to know the information to perform the duties of the officer, employee, or person; or
- (B) to a State agency under section 899D, 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 subtitle, 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 899F(e).
- (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 subtitle.

(3) EXPEDITED REVIEW OF APPLICATIONS.—

(A) IN GENERAL.—Following the six-month period described in section 899F(e), the Secretary shall, to the extent practicable, issue or deny registration numbers under this subtitle 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 subtitle.

(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 subtitle.

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

(A) IN GENERAL.—Any information constituting grounds for a 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 subtitle, 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 subtitle 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 subtitle to update registration information submitted to the Secretary under this subtitle, as appropriate.
- (7) RE-CHECKS AGAINST TERRORIST SCREENING DATABASE.—
 - (A) RE-CHECKS.—The Secretary shall, as appropriate, recheck persons provided a registration number pursuant to this subtitle 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).

SECTION 899C. 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 subtitle or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

SECTION 899D. 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 subtitle; 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 subtitle.
- (b) DELEGATION.—
 - (1) AUTHORITY.—The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this subtitle.
 - (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 899B and 899C, 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 899B(c)(1) guidance on—

(A) the identification of suspicious ammonium nitrate purchases or transfers or attempted purchasers 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) the record keeping requirements under section 899B; and

(ii) the penalties for violating such requirements.

SECTION 899E. THEFT REPORTING REQUIREMENT.

Any person who is required to comply with section 899B(e) 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.

SECTION 899F. 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 899B, 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 899B.

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

(A) purchase ammonium nitrate without a registration number required under subsection (c) or (d) of section 899B;

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

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

(b) **CIVIL PENALTY.—**A person that violates this subtitle 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 subtitle 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 subtitle.

SECTION 899G. 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, United States Code), 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.

SECTION 899H. PREEMPTION OF OTHER LAWS.

- (a) **OTHER FEDERAL REGULATIONS.**—Except as provided in section 899G, nothing in this subtitle affects any regulation issued by any agency other than an agency of the Department.
- (b) **STATE LAW.**—Subject to section 899G, this subtitle preempts the laws of any State to the extent that such laws are inconsistent with this subtitle, except that this subtitle 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.

SECTION 899I. DEADLINES FOR REGULATIONS.

The Secretary—

- (1) shall issue a proposed rule implementing this subtitle not later than 6 months after the date of the enactment of this subtitle; and
- (2) issue a final rule implementing this subtitle not later than 1 year after such date of enactment.

SECTION 899J. 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.
- (b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after 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.”