

110TH CONGRESS  
1ST SESSION

# H. R. 1680

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IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2007

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

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## 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 disclo-  
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.*