

**(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 to<sup>1</sup> make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to<sup>1</sup>

<sup>1</sup> So in original. The word “to” probably should not appear.