

(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.